

Ekl, Williams
& Provenzale LLC
Attorneys and Counselors at Law

KAROLINA OBRYCKA V. CITY OF CHICAGO, ET AL.

Exhibit JJ
(Deb Kirby Deposition Transcript)

Page 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KAROLINA OBRYCKA, MARTIN)
KOLODZIEJ, and EVA CEPIASZUK,)

)
Plaintiffs,)

) No. 07 C 2372

-vs-) Judge

) Amy J. St. Eve

CITY OF CHICAGO, a Municipal) Magistrate Judge
Corporation, ANTHONY ABBATE, JR.,) Nan R. Nolan
GARY ORTIZ, PATTI CHIRIBOGA, and)
JOHN DOE,)

)
Defendants.)

The deposition of DEBRA KIRBY, called by the
Plaintiffs, for examination, taken pursuant to notice and
pursuant to the Federal Rules of Civil Procedure for the
United States District Courts, pertaining to the taking of
depositions, taken before MARIE WALSH FITZGERALD, Certified
Shorthand Reporter and Notary Public within and for the
County of DuPage and State of Illinois, at 219 South
Dearborn Street, Suite 1241, Chicago, Illinois, on the 12th
day of March, 2009, at 10:34 a.m.

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APICELLA & MALATESTA,

(134 North La Salle Street

Suite 320

Chicago, Illinois 60602), by:

MR. KENNETH C. APICELLA,

Appearing on behalf of Defendant,

Anthony Abbate;

LAW OFFICES OF BARRY KREISLER, P.C.,

(3001 West Armitage Avenue

Chicago, Illinois 60647), by:

MS. MELANIE PENNYCUFF,

Appearing on behalf of the Defendant,

Gary Ortiz.

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APPEARANCES:

EKL WILLIAMS, PLLC,

(901 Warrenville Road

Suite 175

Lisle, Illinois 60532), by:

MR. PATRICK L. PROVENZALE,

Appearing on behalf of the Plaintiffs;

CITY OF CHICAGO, SPECIAL LITIGATION UNIT,

(30 North La Salle Street

Room 1720

Chicago, Illinois 60602-2580), by:

MS. BARRETT E. RUBENS and

MR. JAMES T. McGOVERN,

and

CITY OF CHICAGO,

SENIOR COUNSEL POLICE POLICY LITIGATION DIVISION,

(30 North La Salle Street

Room 1610

Chicago, Illinois 60602,) by:

MR. GEORGE J. YAMIN, JR.,

Appearing on behalf of the Defendants,

City of Chicago;

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I N D E X

WITNESS

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DEBRA KIRBY

Direct Examination - Mr. Provenzale 5 - 121

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E X H I B I T S

(No Exhibits Marked.)

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1 (Witness duly sworn.)
 2 DEBRA KIRBY,
 3 called as a witness herein, having been first duly sworn,
 4 was examined upon oral interrogatories and testified as
 5 follows:

6 DIRECT EXAMINATION

7 By Mr. Provenziale

8 Q. Would you please state your full name and spell
 9 your last name for the record?

10 A. It's Debra Kirby. D-e-b-r-a, K-i-r-b-y.

11 MR. PROVENZALE: Let the record reflect that this
 12 is the deposition of Debra Kirby, taken pursuant to
 13 agreement of the parties as to the time and location, as
 14 well as prior notice that it was rescheduled.

15 The Federal Rules of Civil Procedure apply as well
 16 as the Local Rules of the Northern District of Illinois.

17 BY MR. PROVENZALE:

18 Q. Can you tell me how you are employed today?

19 A. I am employed by the Chicago Police Department.

20 Q. You are a City of Chicago employee?

21 A. Yes, I am.

22 Q. What is your position with the Chicago Police
 23 Department?

24 A. I am the general counsel.

1 A. I was promoted to ADS in July of 2004. That's the
 2 rank I hold currently.

3 Q. What district assignments did you have while you
 4 held the rank of patrol officer from '86 to '90?

5 A. I was assigned for training in the 5th District,
 6 which is on the Southwest Side, far Southwest Side, East
 7 Side of Chicago. I was there for the training period, which
 8 at that time I believe ran about nine months. I went to the
 9 8th District temporarily, probably for about four months,
 10 and then I was returned to the 5th District, where I served
 11 the entire time I was a patrol officer.

12 Q. And what area were you assigned as detective from
 13 August of '90 through sometime in '96 or '97?

14 A. I had a few different positions. In August of '90
 15 I was assigned to Area 2. I remained in Area 2 probably
 16 until about 1993, maybe mid year, at which time I was
 17 assigned to the chief of detectives, and I remained there
 18 until I was promoted to sergeant.

19 Q. Is that at headquarters?

20 A. Yes.

21 Q. Where was your assignment as sergeant from
 22 sometime in '96 or '97 until '99?

23 A. When I was promoted to sergeant, I was assigned to
 24 the 8th District. Probably within a year I was tasked to

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1 Q. How long have you held that position?

2 A. It will be one year March 16th.

3 Q. How long have you been employed by the City of
 4 Chicago in any capacity?

5 A. 22 and a half years.

6 Q. What was the first position you held with the
 7 City of Chicago?

8 A. June 1986 I was hired as a patrol officer,
 9 probationary.

10 Q. June of '86?

11 A. Yes.

12 Q. How long a period of time did you hold that rank?

13 A. I was promoted to detective in 1990, August, I
 14 believe.

15 Q. How long a period of time did you hold that rank?

16 A. I was promoted to sergeant in 1996 or 7. I'm not
 17 sure of the exact year.

18 Q. And for how long a period of time did you hold
 19 that rank?

20 A. I was promoted to lieutenant in 1999.

21 Q. How long did you hold that rank?

22 A. I was promoted to commander in 2002.

23 Q. And for how long a period of time did you hold
 24 that rank?

1 head a grant program and develop the domestic violence
 2 program for the Chicago Police Department, which is where I
 3 was until I was promoted to lieutenant.

4 Q. And where was your lieutenant assignment at?

5 A. Went back to the 8th District again. I was there
 6 approximately a year, year and a half, and I was then
 7 assigned to the vice control section. I was in charge of
 8 the licensing unit.

9 Q. Which section was that?

10 A. Vice control.

11 Q. Vice control.

12 And that was until your --

13 A. Until I was promoted to commander.

14 Q. And what was your assignment as commander?

15 A. As commander I was promoted to oversee the vice
 16 control section, and I was there until I was promoted to ADS
 17 in July of 2004.

18 Q. Your assignment to the grant program for the
 19 domestic violence, developing the domestic violence program
 20 that was a city-wide assignment?

21 A. Yes.

22 Q. And your assignment to vice control as lieutenant
 23 and then in your promotion to the position of commander
 24 where you oversaw that, that was city wide?

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1 A. Yes. I mean, they are not specific units. The
 2 vice control section, it would be like the narcotic section,
 3 right, so city wide responsibility.
 4 Q. And then where was your first assignment as ADS?
 5 A. ADS, I was in charge of the Internal Affairs
 6 Division.
 7 Q. Before we get into the structure of IAD, what's
 8 your highest level of education?
 9 A. I have a law degree from John Marshall.
 10 Q. When did you obtain that?
 11 A. In '92.
 12 Q. Where did you obtain your undergrad?
 13 A. U of I, Champaign. Got that in finance in 1984.
 14 Q. Where did you go to high school?
 15 A. Morgan Park High School.
 16 Q. Prior to your employment with the Chicago Police
 17 Department, did you have any military background?
 18 A. No.
 19 Q. Prior to your employment with the Chicago Police
 20 Department, did you have any other sworn law enforcement
 21 positions?
 22 A. No.
 23 Q. Did you go into the police academy right out of
 24 college?

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1 A. No, I did not.
 2 Q. What did you do in the interim?
 3 A. I worked at the Board of Trade for Geldermann,
 4 G-e-l-d-e-r-m-a-n-n.
 5 Q. How long did you do that for?
 6 A. Two years.
 7 Q. And then you went into the --
 8 A. The police academy, yes.
 9 Q. At the time that you entered the police academy,
 10 did you have any relatives who were employees of the City of
 11 Chicago?
 12 A. Yes, I did.
 13 Q. And who were those?
 14 MS. RUBENS: I just object to relevance.
 15 You can answer.
 16 THE WITNESS: 1984, my father was a fire fighter,
 17 my uncle was a police detective, and I think that's all that
 18 I had at that time.
 19 BY MR. PROVENZALE:
 20 Q. Did you list either your father or your uncle on
 21 your application to the City of Chicago for the position of
 22 police officer as references?
 23 MS. RUBENS: Same objection, to relevance.
 24 THE WITNESS: I don't recall.

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1 BY MR. PROVENZALE:
 2 Q. As the ADS for IAD, when you started that
 3 appointment in 2002, correct?
 4 A. ADS IAD is 2004.
 5 Q. I am sorry, 2004. Who was your -- who did you
 6 immediately report to?
 7 A. My immediate report was the superintendent,
 8 Superintendent Phil Cline.
 9 Q. As I understand it, at the time IAD was divided
 10 into -- was it two divisions, there was administrative and
 11 investigative? Why don't you tell me what's the immediate
 12 structure, the hierarchy structure right below ADS?
 13 MS. RUBENS: I just object to vague.
 14 If you understand, you can answer.
 15 THE WITNESS: The structure of IAD at the time
 16 that I was appointed wasn't just to the -- the overview of
 17 IAD was that there is basically five sections within IAD.
 18 There is an administrative section, which is the day-to-day
 19 business of IAD, there was the advocate section, which is
 20 focused on the adjudication of discipline, and then there
 21 were three investigative sections; confidential, special,
 22 and general.
 23 BY MR. PROVENZALE:
 24 Q. And each of them had a lieutenant assigned as the

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1 supervisor for each section? I mean, they were the next
 2 rank below you, or did they hold different ranks, whoever
 3 ran each of those sections?
 4 MS. RUBENS: Objection to assuming facts.
 5 You can answer if you can.
 6 THE WITNESS: To clarify, the investigative
 7 section, confidential, special, and general had a lieutenant
 8 in charge of those.
 9 BY MR. PROVENZALE:
 10 Q. And then what rank was the person who was in
 11 charge of the administration and advocate?
 12 A. The administration section was -- I had an
 13 administrative sergeant, they reported under me, and the
 14 advocate section has a sergeant in charge of that.
 15 Q. And each of those ranking officers, as you just
 16 described for each of the sections, reported directly to
 17 you?
 18 A. Correct.
 19 Q. As part of the operation of the administrative
 20 section, was there a reporting mechanism in place back at
 21 the time that you became ADS of IAD where categories of
 22 complaints were tracked?
 23 A. I'm not clear what you mean by reporting
 24 mechanism.

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1 Q. Reporting mechanism means that there were some
2 record-keeping measures in place that would track the number
3 of certain categories of complaints, like excessive force
4 complaints versus false arrest complaints versus other types
5 of complaints of misconduct alleged against officers?

6 MS. RUBENS: Object to vague, confusion, and
7 compound, but you can answer.

8 THE WITNESS: I guess I am confused by what you
9 mean by mechanism.

10 BY MR. PROVENZALE:

11 Q. Well, was there a procedure? That's what I am
12 talking about. Was there some sort of procedure in place
13 where if I would come into IAD from OPS, related to some
14 allegation of officer misconduct and it was the
15 responsibility of the administrative section of IAD to keep
16 track of the category of complaint and then somehow report
17 it so that statistics were collected and maintained by the
18 Chicago Police Department of how many complaints of a
19 particular type of misconduct came in?

20 MS. RUBENS: Same objection, but you can answer.

21 THE WITNESS: You are asking a lot of questions.
22 Was IAD tasked with receiving information and storing
23 information? Yes, I can answer that.

24 MR. PROVENZALE: Okay.

1 against an officer for some type of misconduct, okay, and
2 that, as I understand it, whether it's an excessive force
3 complaint or some other type of complaint, and regardless of
4 whether OPS or IAD is going to handle the investigation, the
5 file is routed to IAD so that the complaint -- the type of
6 complaint that it is can be characterized and then cataloged
7 so that statistics are maintained of each type of complaint
8 that comes in?

9 MS. RUBENS: Object to compound and -- that's it.

10 You can answer.

11 MR. PROVENZALE: And if that's not correct, then
12 educate me on your understanding of the process. Do you
13 know what I mean?

14 THE WITNESS: I'm trying to. All right. When a
15 complaint is registered at OPS, and all complaints are
16 registered through OPS, the number is pulled, and so from
17 the registration of the complaint, there is an
18 identification of what that conduct is. OPS is responsible
19 for cataloging, I think is the term that you are looking
20 for, the complaints that they retain, so --

21 BY MR. PROVENZALE:

22 Q. So when you say cataloging, just so I understand,
23 explain to me what you mean by that. Just saying that it's
24 a -- coding it, saying it is this code for this type of

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1 THE WITNESS: You asked a lot of other stuff --

2 BY MR. PROVENZALE:

3 Q. Well, my question was kind of trying to cut to the
4 quick, because there is information that I've received from
5 other witnesses as to kind of the structure and how the
6 information came in, so I'll go through it all just so there
7 is clarity about it.

8 Tell me what your understanding was as to how
9 statistics were maintained of the types of complaints of
10 misconduct that were levied against an officer by IAD?

11 MS. RUBENS: I object to foundation.

12 You can answer.

13 THE WITNESS: My question, I guess, or my
14 confusion is when you are talking of statistics and the role
15 of IAD, I'm not sure what you are talking about, because
16 there is a variety of information. I mean, IAD was tasked
17 with investigating, and so if you are questioning how
18 investigations are assigned, that's one thing, but if you
19 are just talking raw numbers --

20 MR. PROVENZALE: I'm talking raw numbers.

21 BY MR. PROVENZALE:

22 Q. In terms of, a file would come in and there would
23 be a complaint that the file was created, or somebody had
24 called in to OPS or had walked in and made a complaint

1 complaint?

2 A. Correct.

3 Q. And once the complaint is coded, do they record
4 the fact that -- in some statistical database, you know,
5 that just accumulates all the raw data, the raw numbers of
6 how many of a certain code occur in a given time period, is
7 that OPS who records that information or is that IAD who
8 records that information?

9 MS. RUBENS: Object to foundation and calling for
10 speculation.

11 You can answer.

12 THE WITNESS: I'm not the technical person, so I
13 can't answer, I believe the data basing, where it's stored,
14 but to my understanding, it was never, at least not the
15 function of either IAD or OPS to have raw data. The data
16 that we are collecting is relative to investigation, so
17 whatever data is pulled out comes out of investigative
18 numbers and not just raw numbers.

19 MR. PROVENZALE: Okay. Well, then, why don't w
20 talk about just sort of the life of a complaint from
21 beginning to end. And I know this is a good time to break,
22 but why don't we do that now.

23 Let's go off the record.
24

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1 (WHEREUPON, Mr. Yamin entered the
2 deposition proceedings.)
3 (WHEREUPON, discussion was had
4 off the record.)

5 MR. PROVENZALE: We want to go on the record with
6 our positions.

7 MR. YAMIN: Yes.

8 MR. PROVENZALE: Back on the record.

9 Mr. Yamin and I have had a conference outside
10 regarding the subject matter of this witness' testimony in
11 the deposition today.

12 Prior to today's date, the plaintiff had issued
13 five categories requested for the identification of 30(b)(6)
14 witness representative deponents, and the City had
15 identified four witnesses as responsive to witnesses who
16 possess knowledge as to those five subject matter
17 categories. Those witnesses were Mike Duffy, Commander
18 Salemi, if I pronounced that correctly, Sergeant Dan Kivel,
19 and Officer Genevive Hutchenson. Deb Kirby was not
20 identified in response to any of the 30(b)(6) categories,
21 and, likewise, the City did not disclose her otherwise as a
22 30(b)(6) witness or as a 26(a)(2) witness to provide or
23 present any expert opinions in the case as of this point.

24 And it's the plaintiffs' intent to depose the

1 those claims, you know, would be appropriate to ask of her
2 while she is here.

3 At the moment the City does not intend to disclose
4 ADS Kirby as a Rule 26(a)(2) witness. The City does intend
5 to ask her questions that pertain to the Monell claim, and
6 will most likely go forward after plaintiffs are completed
7 with their questions. If, after the deposition,
8 developments in the case lead us to revisit this issue, the
9 attorneys have agreed to do that. The City's position is
10 that there would be no reason to re depose -- given what
11 I've just said, there will be no reason to re depose Ms.
12 Kirby at a later date, and this is plaintiffs, you know,
13 last best chance to inquire of her what they need to
14 inquire, as it is the City's chance to make its own record.
15 Thank you.

16 MR. PROVENZALE: And you can say what you want to
17 say, but, just for the record, given Mr. Yamin's comments
18 and what appears to be a line of questions that he will pose
19 to the witness regarding what may be expert testimony, where
20 her opinions are based upon things other than her personal
21 knowledge, that the plaintiff is reserving the right to re
22 depose her, in the event that those questions are asked and
23 answers are given.

24 MR. YAMIN: Okay. Thank you.

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1 witness as to her personal knowledge of the operation of the
2 Internal Affairs Division of the Chicago Police Department
3 and her personal knowledge of the events related to this
4 case, and the plaintiff would object to the witness
5 providing any expert testimony that would be required to be
6 disclosed under 26(a)(2) as the plaintiff would not have an
7 opportunity to develop the materials that may be used to
8 test the witness' opinions based upon collateral materials
9 and sources of information. So that's the plaintiff's
10 position.

11 MR. YAMIN: In response, the City would say that
12 it agrees with Mr. Provenzale that ADS Kirby was not
13 disclosed as a Rule 30(b)(6) witness. She's here by notice,
14 correct?

15 MR. PROVENZALE: It was agreement. It was prior
16 notice and it was rescheduled by agreement.

17 MR. YAMIN: Okay. So plaintiffs' notice, her
18 deposition, which is now going forward, the plaintiffs have
19 brought various claims against defendants, including what's
20 commonly known as a Monell claim against the City, and to
21 that extent -- and plaintiff is aware that ADS Kirby is a --
22 at the time of the incident was the head of the Internal
23 Affairs Division of the police department; therefore, as of
24 today, plaintiff is on notice that questions relevant to

1 MS. RUBENS: And neither side has been required to
2 tender their expert disclosures as of yet. The plaintiffs
3 are due on 4/27/09 and Defendants July 15, '09. So pursuant
4 to those dates, we will be disclosing our experts, which may
5 or may not include Deb Kirby.

6 MR. YAMIN: Can we go off the record for just one
7 second?

8 (WHEREUPON, discussion was had
9 off the record.)

10 BY MR. PROVENZALE:

11 Q. Ms. Kirby, I was just about to ask you questions
12 about the sort of life of a complaint of officer misconduct.
13 I would like to walk through that and hopefully educate
14 myself about how categories or codes of misconduct are
15 tracked. Let's say somebody -- let's get past whether it's
16 a walk-in complaint or a call in to 311 or somebody calls in
17 to 911, whatever it is, once OPS receives a complaint of
18 misconduct against a police officer at the intake level,
19 what does the intake person do?

20 A. Once --

21 MR. YAMIN: This is my area?

22 MS. RUBENS: Yes.

23 MR. YAMIN: I object to foundation.

24 You may answer that.

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1 BY MR. PROVENZALE:

2 Q. I'm talking about, again, back at the time when
3 you were the ADS of IAD, which would have been from '04
4 through when?

5 A. '08. Sorry. It is a year. So '08.

6 Once a complaint is registered at OPS, and it is
7 OPS at the time that we are discussing, they review all
8 complaints through intake at the time, and they make the
9 determination as to which complaints they'll retain.

10 Q. As I understand it, there are codes for categories
11 of complaints; is that correct? Or there were codes back at
12 the time?

13 A. That is correct.

14 Q. And the intake person would receive the complaint
15 and then would categorize the complaint corresponding to a
16 specific code for that type of complaint; is that correct?

17 A. At the time that OPS logs the complaint, it is not
18 categorized.

19 Q. Okay.

20 A. But for OPS complaints.

21 Q. So a complaint number is given to the complaint?

22 A. Correct.

23 Q. At the intake level, correct?

24 A. Correct.

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1 Q. But there is no characterization by the intake
2 person as to what category or code number for that complaint
3 is to be assigned at that time; is that correct?

4 A. For other than OPS complaints, that is correct.

5 Q. Meaning other than excessive force complaints?

6 A. OPS had more jurisdiction than just excessive
7 force.

8 Q. What jurisdiction did OPS have beyond excessive
9 force?

10 A. They retained domestic violence complaints where
11 the accused is a police officer, and they also retained
12 other complaints as identified by the superintendent.

13 Q. That would be on sort of individual, case-by-case
14 basis?

15 A. Correct.

16 Q. So if it was not one of those three things, it was
17 not coded by OPS; is that correct?

18 A. That is correct.

19 Q. So let's assume that it was not one of those three
20 things where it was initially coded by OPS, what was the
21 next step after the intake receipt of that complaint?

22 A. Once OPS made the determination that they were not
23 going to retain a complaint, it was forwarded on a daily
24 basis to the Internal Affairs Division.

1 Q. Who was the officer who received those in IAD?

2 Let's say, what section of IAD? Why don't we start with
3 that.

4 A. It went to the administrative section. There were
5 two officers that served in that capacity. On the date for
6 this case, I'm not sure which officer it would have been.

7 Q. Well, what rank of person --

8 A. It was a patrol officer.

9 Q. It was one of the subordinates in the
10 administrative section?

11 A. Correct.

12 Q. Whoever it was, what was that person's
13 responsibility upon receipt of that complaint? Let's just
14 specify in terms of cataloging or characterizing the
15 complaint for coding?

16 A. On a daily basis, any complaints not retained by
17 OPS were forwarded to the Internal Affairs Division. The
18 intake officer would then take those complaints, which were,
19 in essence, a face sheet, and review those for a variety of
20 purposes, one of them was to identify which category code it
21 would be identified in.

22 Q. And then, in addition to that officer
23 characterizing and coding, how was the fact of the
24 characterization and the coding recorded? Would that

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1 officer do it at that point, or would it be sent to somebody
2 else so that the raw data number or -- it was an '05 in this
3 particular complaint, and then someone inputs '05 into some
4 computer. I mean, where did that happen at?

5 A. I'm not certain if the intake person could do that
6 at that time. I know that the ability changed over the time
7 I was at IAD, but it would have been either the intake
8 person or the records person would have done the entry on
9 the data.

10 Q. In terms of that initial coding of the -- and
11 characterization of the complaint, was there any review
12 process where, after it was coded or characterized by the
13 intake officer, somebody else had eyeballs on that coding of
14 the complaint before it was, you know, recorded as raw data?

15 MR. YAMIN: Objection; form.

16 You can answer.

17 THE WITNESS: Yes, there was.

18 BY MR. PROVENZALE:

19 Q. And describe that process for me?

20 A. The challenge I am having here is that you are
21 focusing strictly on coding, and the intake process was not
22 necessarily primarily focused on coding.

23 Q. Okay.

24 A. So my ability to answer was more to the process

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1 rather than to the --

2 Q. Then let's go through -- walk through the process.

3 So where does it go after the intake officer --

4 A. The intake officer would receive the day's
5 complaints. They would review the face sheets and they
6 would make an initial determination as to category, code,
7 and assignment. As the head of IAD for some period of time,
8 I was reviewing that to determine it was appropriate code
9 and assignment. At some point it was transferred to the
10 administrative lieutenant --

11 Q. Do you know whether that was done prior to
12 February 19th of '07?

13 A. I believe it was, but I'm not certain.

14 Q. The code and assignment, that's the phrase that
15 you used, so I hope I understand, is that, like, a tag line
16 for what happens in the intake, by the intake officer, code
17 and assignment?

18 A. Well, again, I'm not sure how you -- but the
19 intake person would have a CR number, they would have what
20 it was coded as, and then recommend an assignment, whether
21 it be field or IAD.

22 Q. So once he had completed that process, where did
23 it go from there, to the ADS would review it?

24 A. After the ADS reviewed it, or the lieutenant, as

1 section, her review was more directed to whether the
2 complaint was coded properly and then recorded?

3 A. That's my understanding, yes.

4 Q. While you were the ADS of IAD, were you aware of
5 any written protocols or guidelines that were used by either
6 the intake officer or by the records review in their
7 tertiary review of incoming complaints regarding the coding
8 of complaints?

9 MR. YAMIN: Objection to form.

10 THE WITNESS: As far as written documents, the
11 codes themselves have descriptors. There was some
12 guidelines that were being followed, whether there was the
13 memo form, I really don't recall.

14 The parties who have been doing it have been doing
15 it for a while. I really don't recall seeing any direct
16 documents.

17 BY MR. PROVENZALE:

18 Q. Were you aware at the time that you were the ADS
19 of IAD of any written protocols or guidelines related to
20 primary and sub-coding of allegations of misconduct
21 where there was a primary allegation and then there were
22 sub-allegations that were also recorded as well?

23 MR. YAMIN: I object to form.

24 THE WITNESS: No.

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1 the case may be, there was then, also, an additional review
2 within the records section by Sergeant Muzupappa, who has
3 responsibility for the data entry and record retention on
4 disciplinary records.

5 M-u-z-u-p-p-a.

6 Q. What was the scope of his review?

7 A. It's Phyllis Muzupappa, and her review --

8 Q. Or her review. Sorry.

9 A. Her review, frankly, was probably more in-depth to
10 the issue that you are looking at in terms of data. She
11 would review the face sheet, she would also be a secondary
12 check on the appropriate category code, and her staff would
13 be responsible for entering it into our computer system,
14 which tracked complaint investigations.

15 Q. So in terms of that intermediate step of review
16 between the intake officer and the records review officer,
17 Sergeant Muzupappa; is that right?

18 A. Correct.

19 Q. The step where either the lieutenant or the ADS
20 reviewed it, was that more for the investigative assignment,
21 as opposed to the coding, or was it everything?

22 A. My review was more focused on investigative
23 assignment.

24 Q. And when the face sheet would go to the record

1 BY MR. PROVENZALE:

2 Q. If a complaint had come in, for example, a
3 complaint where there was an allegation of false arrest,
4 which would be, if it wasn't asked by the superintendent for
5 OPS to handle, that would be a typical one IAD would handle;
6 is that correct?

7 A. Correct.

8 Q. If a complaint came in for false arrest against
9 one officer and then there were other officers who were
10 implicated as being present and not intervening or failing
11 to report that allegation of misconduct where they were
12 otherwise present, alleged to have been present during it,
13 how would the failure to report be coded, if it would be at
14 all in connection with an allegation of false arrest?

15 A. You are confusing intake with closing. Upon
16 intake there is initial categorization to the complaint. At
17 closing there is findings entered against individual
18 officers, so it's not equal.

19 Q. Okay. Well, at the intake level, and I don't want
20 to confuse them, I just want to limit it to the intake
21 level. There is nothing to that effect of coding what could
22 be reasonably characterized as a failure to report on other
23 officers who are alleged to have been present but did not
24 actually conduct the false arrest. At the intake level, it

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1 is just a false arrest; is that correct?

2 A. At the intake level, if the allegation is a false
3 arrest, every portion identified with it at the initial
4 stage would be identified as a false arrest.

5 Q. That's what I want to make sure, that there aren't
6 sub-allegations that may ultimately be developed and
7 recorded later on, at least as of the intake level and
8 records, the initial data entry in the records division by
9 that sergeant, it's just coded as whatever the primary
10 allegation is?

11 A. Right.

12 Q. So from that point, after it goes to the record
13 section for that additional review, where does the complaint
14 face sheet go from there?

15 A. The actual assignment of the complaint, then,
16 would be either as identified to the field or to the
17 Internal Affairs Division.

18 Q. In terms of up to that point and the actual
19 substance of the investigation, is there any input that you
20 as the ADS in charge of IAD would make by way of notation or
21 something saying, this needs to be done investigative --
22 these investigative steps need to be taken, or this -- you
23 know what I mean? Some sort of substantive direction or
24 recommendation as to certain investigative steps that should

1 basically assigning it. Any type of investigative
2 recommendation step it would happen upon assignment, so,
3 correct, the intake was looking at coding and field
4 assignment, or whatever unit of assignment, and then moving
5 on for that part, correct.

6 Q. And in the event that there was -- in the review,
7 let's say something was wrong, what would be the step that
8 would be taken in the event that something was identified in
9 that review process as being wrong? Would it go back up the
10 line? What would happen with it?

11 A. There was always -- not always, but frequently
12 there was missing information, or perhaps a missed
13 assignment. If there was a lack of clarity as to whether or
14 not something should be assigned to IAD or OPS, there would
15 be communications between supervisors at OPS and IAD. You
16 know, sometimes we'd get complaints over a register and it
17 turned out to be an outside agency. So that type of
18 information, or, I guess, misinformation, was more or less
19 mechanical as well. The idea of verifying, is it, in fact,
20 a complaint against a Chicago Police Department member? If
21 not, you know, there would be a closing of the complaint
22 immediately upon discovery. So those were more or less, I
23 guess, routine practices as well.

24 If a category was wrong, but IAD assigned the

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1 be taken by whomever it gets assigned to?

2 A. Off of the initial face sheet review?

3 Q. Yes.

4 A. I never say never, but I wouldn't do it that way.
5 If IAD was retaining something, there would be a
6 conversation with a lieutenant.

7 Q. Is it fair to say that it was a pretty mechanical
8 process in terms of the intake and the review process of the
9 complaint going from the intake officer to either the
10 lieutenant or the ADS and then to the records division
11 before it gets sent out for assignment?

12 MR. YAMIN: Objection to form.

13 THE WITNESS: I guess I don't know what you mean
14 by mechanic.

15 BY MR. PROVENZALE:

16 Q. I mean, you look at it, you make sure it looked
17 okay in terms of the proper recommendation for assignment,
18 as well as the coding of it, and then you wouldn't -- there
19 wouldn't be any, I guess, supplemental recommendations made
20 by you or the lieutenant in that intermediate step where
21 you'd say, well, you might want to think about this or think
22 about that when you sent it on to the records division prior
23 to it getting shipped off for assignment?

24 A. That would be accurate. What we are doing is

1 category, so if my intake person, perhaps, gave it a wrong
2 number, data entry or just error in general, that would be
3 corrected as well, too.

4 Q. Would you send it back to them to correct it, or
5 would you just go ahead and do it and then send it on to
6 records? I am talking about your routine practice.

7 A. It's more or less a contemporaneous practice is
8 that the face sheets would come to me, I would review it, if
9 my intake person wrote down a wrong code and I recognized
10 it, I would just draw through it and correct the code, or if
11 it was a misassignment, I would just have it assigned to
12 what I thought was the proper unit.

13 Q. I take it, given what you were attempting to
14 achieve, which was to make sure that there weren't any
15 mistakes along the -- you were still trying to streamline
16 the process to get the complaint directly to the
17 investigative aspect of it?

18 A. Again, the focus for IAD was investigating the
19 complaint, and, you know, the belief is that is the
20 complaint -- all information changes. So what's done at
21 intake may not necessarily be what we wind up with at the
22 end of the investigation.

23 Q. If a complaint, after it goes through the records
24 review, if it is not assigned out to the field, if it stays

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1 within IAD, it's assigned to one of the three sections; is
2 that correct?

3 A. Correct.

4 Q. Who makes that decision, or who made that decision
5 along that review line?

6 A. Generally, I did.

7 Q. In terms of the three different sections of IAD,
8 was there any written protocol or guidelines as to what type
9 of case should be investigated by a specific investigative
10 division?

11 A. There was the SOP, which kind of identified very
12 broadly the parameters of the sections. But, as far as
13 right line rules as to who had what, there were very few.

14 Q. It was a case by case, your judgment, as to where
15 it would go?

16 A. There was general parameters.

17 Q. Well, other than general parameters, I mean, you
18 would apply the general parameters and then, on a case by
19 case basis, you determined whether there needed to be a
20 deviation from the general parameters or whether the general
21 parameters were appropriate in that circumstance?

22 A. Correct.

23 Q. As a general rule, when you made that assignment,
24 if you knew it was going to stay in IAD, you did not make

1 have been made under oath by the complainant. Are you
2 familiar with that statute?

3 A. You are citing the statute incorrectly.

4 Q. Well, what is your understanding of the statute?

5 A. The statute requires that before any peace
6 officer, and it is not just the City of Chicago, could be
7 interviewed regarding a disciplinary matter, there has to be
8 a signed affidavit.

9 Q. Have you ever heard of the phrase "affidavit
10 override" or "affidavit waiver" in connection with --

11 A. Yes, I have.

12 Q. Explain to me what you understand -- first of all,
13 do you understand those terms to be interchangeable? Are
14 they both used, or is it just affidavit override that's
15 generally used?

16 A. I'm not sure of any specific term used, but it
17 would have an affidavit override in my experience.

18 Q. Explain to me what your understanding of that is?

19 A. The City of Chicago negotiated additional ability
20 to investigate complaints against police officers beyond
21 what the statutory requirement was.

22 Q. Where is that recorded, to your knowledge?

23 A. Within the FOP contract.

24 Q. The CBA?

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1 any specific recommendations on the face sheet or in any
2 other notation attached to the face sheet that was sent down
3 to whatever investigative division it was sent to with
4 directions as to particular specifics of investigative steps
5 to be taken. As a general rule, you didn't do that; is that
6 correct?

7 MR. YAMIN: Objection; form.

8 THE WITNESS: As a general rule, yes, I don't
9 recall doing that.

10 BY MR. PROVENZALE:

11 Q. Once a complaint is forwarded by assignment to one
12 of the investigative divisions, is it the discretion of the
13 head of that division and whoever is assigned to investigate
14 it as to what investigative steps are going to be taken to
15 look into the complaint. You know, assuming compliance
16 otherwise with what IAD requires for specific
17 investigations?

18 A. Each unit had a commanding officer, so the
19 commanding officer was in charge of overseeing the
20 investigations. So within that role, you know, those
21 decisions for the most part were theirs.

22 Q. As I understand it, in 2004 there was a state
23 statute passed that the City of Chicago takes as requiring
24 that a complaint, in order for it to be investigated, has to

1 A. Correct.

2 Q. Do you know when that CBA incorporated that
3 provision?

4 A. I believe it was after the state statute was
5 passed, because we were in negotiations to establish how the
6 affidavit process would work in Chicago.

7 Q. Who has the authority to -- let's say, to start
8 with, who has the authority to request an affidavit
9 override?

10 A. Either the head of -- well, it's a process. Any
11 investigator can bring forth the fact that they believe that
12 this case warrants an override, but for formal approval of
13 the override, it has to be either the head of IAD for an OPS
14 matter or the head of IPRA now, but at the time OPS for an
15 IAD matter.

16 Q. And my specific question was actually, I guess,
17 directed to, I mean, who can initiate the request? Not
18 necessarily who is the one who makes the decision, but is
19 this essentially fair that any investigator assigned to a
20 complaint can say, hey, I think this is one that needs an
21 override, and then approach either his lieutenant or the ADS
22 and relay that?

23 A. That would be correct.

24 Q. And then it is up to the ADS to make that decision

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1 of whether or not to override the affidavit requirement, or
2 is there another step for approval of that?

3 A. It would be up to the head of IAD to determine --
4 to make the request of OPS, IPRA would then approve the
5 override.

6 Q. I see. So all overrides had to be run through OPS
7 and/or IPRA, whatever it was called at the time?

8 A. For IAD overrides, correct.

9 Q. For IAD, okay.

10 So in your position as ADS of IAD throughout the
11 time that you were there, you never had the authority to
12 approve an affidavit override; is that correct? You could
13 only seek the approval from the head of OPS or IPRA if that
14 was it at the time?

15 MR. YAMIN: Objection. That doesn't quite get her
16 testimony.

17 MR. PROVENZALE: Okay. Then clear it up for me.

18 MS. RUBENS: Join.

19 THE WITNESS: That's incorrect. I had the
20 authority and the ability to approve overrides at the
21 request of OPS, and OPS has the ability and the authority to
22 approve overrides at the request of IAD.

23 MR. PROVENZALE: I see. Okay.

24 BY MR. PROVENZALE:

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1 A. I don't recall, but for either agency to request
2 an override, basically we understood what, you know, was
3 required under the collective bargaining agreement and the
4 law, and if we were going forward with an override,
5 basically we knew we had the circumstances for it, at least
6 in my opinion. But I don't recall how many I denied or
7 approved.

8 Q. All right.

9 What was the paper trail on overrides, for lack of
10 a better word? I mean, how were they relayed and how were
11 they tracked or recorded? In terms of both a request for it
12 and then the approval process?

13 MR. YAMIN: Objection to form.

14 THE WITNESS: There is no database. It would be a
15 paper request, the override would substitute for the
16 affidavit on the investigation. The lack of an override
17 would probably be attached to the closed file on the CR as
18 well, so it would be part of the investigative file.

19 BY MR. PROVENZALE:

20 Q. Meaning that, when you say the lack of an
21 override, meaning just like the empty form for what would
22 otherwise be -- well, let me ask you first: Was there a
23 form for an override?

24 A. No.

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1 Q. So sort of in an out of house review process. OPS
2 itself could not approve an affidavit override for one of
3 its investigations, likewise, IAD could not approve an
4 affidavit override for one of its investigations. You had
5 to seek the approval of the head of the other department; is
6 that correct?

7 A. That's correct.

8 Q. In the entire time that you were the head of IAD,
9 did you ever approve any affidavit override request that
10 came from OPS or if it was IPRA at the time?

11 A. Yes, I did.

12 Q. How many do you recall doing?

13 A. I have no -- I have no recollection of how many.

14 Q. I mean, was it in excess of a hundred?

15 A. I really don't have a recollection. I don't
16 believe it to be a significant amount, but I can't give you
17 a set number.

18 Q. Of the total percentage of override requests that
19 you received despite, you know, not being able to remember
20 the total number that you approved, what was the percentage
21 of your approvals of the total number of requests that you
22 received? I mean, was it basically, whenever it was asked,
23 you gave it, or was it a very rare case that you gave it
24 when you were asked?

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1 Q. Customarily, what was the form that it would take,
2 that an override would take, was it like a to-from or what
3 was it?

4 A. Within IAD, and I cannot speak for OPS, if an
5 officer was seeking to go forward on an investigation that
6 needed an override, they would first try to come to
7 generally their commanding officer. It may not have gone to
8 the sergeant depending upon the structure of the individual
9 unit. In that time it would come to me in writing and I
10 would review it. You know, certain incidents could be
11 investigated without an override form and without an
12 affidavit; however, if an affidavit was needed, then I would
13 draft a letter to OPS requesting the override, and then we
14 would forward that to OPS.

15 Q. Aside from that sort of out-of-house review
16 process, was there a higher level of review in the
17 superintendent's office where if, you know, let's say you,
18 as the requested department to approve an OPS override
19 request, made a decision that you were not going to grant
20 the override, could OPS -- was there a mechanism in place
21 where OPS could go to the superintendent and say, we think
22 that we need this?

23 A. Pursuant to the collective bargaining agreement,
24 it was just the head of IAD or OPS. Could the

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1 superintendent have weighed in? He is the superintendent,
2 but I have no --

3 Q. I am not saying what he could have done, I am
4 saying, was there a mechanism in place for it? Like, in
5 other words, there is nothing written in the CBA that said
6 that if an affidavit override was denied by OPS or IAD with
7 respect to the cross request, then there was a mechanism for
8 appeal to the superintendent's office?

9 A. No.

10 Q. Are you aware of any case when you were the head
11 of IAD where you brought the superintendent's office in to
12 weigh in on the denial of the override by OPS or IPRA?

13 A. No, I'm not.

14 Q. Are you aware of the reverse circumstance where
15 OPS or IPRA had brought the superintendent's office to weigh
16 in on your denial of an override request?

17 A. No, I am not.

18 Q. The to-from memos that you mentioned that the
19 investigating officer would present to his lieutenant, those
20 would be maintained in the CR file?

21 A. If they existed, yes.

22 Q. Was that a requirement, those type of to-from
23 memos would be generated either by the officer who was
24 investigating it or by the lieutenant or whoever it was that

1 overrides and/or approval of the requests for affidavit
2 overrides by any department of the City of Chicago?

3 MR. YAMIN: Objection; foundation.

4 THE WITNESS: No, I am not.

5 BY MR. PROVENZALE:

6 Q. To your knowledge, there is no statistics that
7 reflect the rate of incidents of requests being made or
8 approvals being granted or denied; is that correct?

9 MR. YAMIN: Same objection.

10 THE WITNESS: To my knowledge, yes.

11 BY MR. PROVENZALE:

12 Q. I had asked you earlier your recollection of the
13 number of affidavit overrides you have requested of the
14 approval of OPS or IPRA while you were the head of IAD. How
15 many did you receive as the head of IAD from OPS or IPRA?

16 A. I don't recall.

17 Q. Even in terms of, like, an outside number, was it
18 more than 20 or less than 20 in the four years that you were
19 ADS?

20 A. I really can't recall. I do know it wasn't a
21 significant number, but I don't recall how many.

22 Q. You said it was not a significant number?

23 A. No.

24 Q. In terms of the structure of the recording system

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1 was initiating the request about an affidavit override to be
2 brought to your attention, or was it just at the discretion
3 of the officer whether to paper that request?

4 A. The request had to be papered for me to review it,
5 so whether it was the lieutenant or the officer who drafted
6 it, I'm not certain.

7 Q. But there had to be a paper on it?

8 A. Yes.

9 Q. Okay. Was that just sort of like an oral edict,
10 if you are going to request an affidavit override, you got
11 to have a to-from presented to the ADS in order to get that,
12 or was there some written protocol or guideline about that?

13 MR. YAMIN: Objection to form.

14 THE WITNESS: I don't recall. I do know that we
15 had a written practice on affidavit override. I'm not sure
16 if that was contained within there.

17 BY MR. PROVENZALE:

18 Q. You know, I don't remember seeing that in the SOP.
19 Do you know whether that was in the SOP or is that something
20 else that was, like, a memo that was just issued within IAD?

21 A. It was most likely a memo issued within IAD
22 because the affidavit was a new practice.

23 Q. Are you aware of whether or not any data has ever
24 been recorded regarding the rate of requests for affidavit

1 that was in place for codes of misconduct allegations at any
2 time while you were the head of IAD, did you ever have any
3 input on how the codes were, let's say, just labeled? Let's
4 start with that.

5 MR. YAMIN: Objection to form.

6 THE WITNESS: Yes, I did.

7 BY MR. PROVENZALE:

8 Q. And what was that involvement? Tell me about
9 that.

10 A. You asked generally if I had any input --

11 Q. Right.

12 A. -- and I did, but there are a variety of places
13 that that happened.

14 Q. Let's start with the first.

15 A. We had changed the program, and we are currently
16 still developing a program known as auto complaint, with the
17 idea being that it would be in a completely automated
18 process and not paper, and so there was a significant amount
19 of work done on updating and changing categories in regards
20 to a new system that would be automated fully.

21 Q. When did that process start of the development of
22 the automated aspect?

23 A. That process started before I was appointed to the
24 IAD, and it was ongoing during the entire time that I was at

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1 IAD.

2 Q. In terms of your input into the recording system
3 that was in place while you were the head of IAD, did you
4 have input into the description of allegations of misconduct
5 that were then divided into however many codes there were?

6 A. There had been some modifications in regards to
7 the terms used and to ensuring consistent application to
8 coding within those specific terms.

9 Q. Was there anything specifically that had prompted
10 those modifications to be made that you are aware of? In
11 other words, that there was some statistical analyses that
12 had been done of the data that had been recorded up to a
13 certain point and someone recognized that there was
14 underreporting or over reporting of certain things so that
15 modifications had to be done? Did anything like that ever
16 happen to your knowledge?

17 A. The one thing I can recall, we had a tendency to
18 have a lot of things fall into the miscellaneous categories,
19 and so we had looked at to see what types of things were
20 being reported as miscellaneous to see whether or not they
21 could go back into another category properly or if I needed
22 to develop a new category. That was one area.

23 Q. Let me stop you before you get to the next.

24 How was that identified?

1 somebody just looked at it and said, well, maybe there is
2 something wrong here and we need to look at it more closely?

3 MR. YAMIN: Objection to form.

4 THE WITNESS: You have asked me a lot of questions
5 there, but there was no formal study where we hired a
6 statistician coming in. The idea was day-to-day management
7 of the information that IAD was in charge of.

8 BY MR. PROVENZALE:

9 Q. The code reports that you had referenced, I think
10 that's the phrase you used for it.

11 A. I don't know what I called it.

12 Q. Okay. Or code table, I think that's what you had
13 called it. Was there an annual reporting to the
14 superintendent's office of just the raw data from each
15 district in the City of Chicago?

16 A. Well, I don't know if it was to the
17 superintendent's office. I mean, we do a -- through a
18 variety of reports going out, namely through the police
19 board on a monthly basis the amounts of complaints coming
20 in, and, you know, how many were assigned to IAD, how many
21 were assigned to OPS, from time to time we would examine
22 what were the background of complaints. I am not certain
23 that that went to the superintendent's office.

24 Q. Wherever it went, was there some regular reporting

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1 A. Honestly, I don't fully recall. I think that the
2 idea of reviewing categories and how many numbers are
3 showing up in certain complaint categories within a certain
4 areas. It's been a while since I've even seen an IAD code
5 table, but, you know, each code has certain number of
6 subcategories, as you identified, and then there is always,
7 generally, there was a miscellaneous. So when a higher
8 number of coded categories are falling into the
9 miscellaneous, I am not a data guru, but I would say, is
10 that where those need to be, and if so, do we not have a
11 category that represents what these are. So those are the
12 types of things that we are looking at.

13 Q. Other than just the volume, I mean, are you aware
14 of whether it's just like somebody looked and said, well,
15 that looks like there's too many in the miscellaneous, maybe
16 we need to review that and break it down to see if that is,
17 in fact, some statistical anomaly that, you know, we need to
18 break down because it is not an accurate recording of what's
19 really going on, just by eyeballing it, or was there
20 actually, like, a statistical analysis to determine the
21 rates of incidence as compared to other departments in the
22 United States where the statistics were available? I mean,
23 do you know what I am getting at, as to whether it was
24 actually just an actual study that was done, or whether

1 to some department of the City of Chicago where the raw
2 data, the numbers of particular categories of complaints was
3 communicated on a regular basis for monitoring purposes?

4 A. I don't know about the term of regular, but there
5 are a variety of places in which complaint data, maybe not
6 all of it, but certain points, as applicable, was reported
7 out throughout the department.

8 Q. Is it fair to say that whatever the reporting was
9 and whatever frequency it was, if it was regular or not, the
10 reporting was simply the raw data, the numbers, there was no
11 studies or statistical analyses done of the raw data from
12 which inferences of trends or anomalies were drawn that you
13 are aware of; is that correct?

14 MR. YAMIN: Objection; form.

15 THE WITNESS: When you keep studies and
16 statistical terms, I mean, information reported out was
17 reported out for certain purposes, and so the idea of
18 looking at court attendance, or something along that line,
19 depending upon what the issue was, I mean, there was
20 analysis based on specific issues sometimes at the request,
21 sometimes not.

22 Generally, it was raw data, but then there was
23 also information reported to unit commanders about specific
24 officers to the personnel division. You know, the

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1 discipline data was used for a variety of purposes in a
2 variety of ways.

3 BY MR. PROVENZALE:

4 Q. When you say analysis, what type of analysis are
5 you talking about?

6 A. You'd have to read back --

7 MR. PROVENZALE: Can you read back her answer?

8 So you would refer to the data as there was some
9 type of analysis done.

10 Go ahead and read that back.

11 (WHEREUPON, the record was read by
12 the reporter as requested.)

13 BY MR. PROVENZALE:

14 Q. And my question was: You said there was some
15 analysis done. What type of analysis are you talking about?

16 A. It would be very basic analysis in terms of
17 comparisons, say, within an area to, you know, whether or
18 not certain districts or certain units, where their level of
19 complaints were in comparison to similarly situated units.
20 We would do trends generically over, you know, whether or
21 not there is an increase in certain types of complaints
22 versus others.

23 Q. These were raw data comparisons, though, correct?
24 Where you just look at the volume of complaints in one

1 about?

2 A. That would be the most common analysis that was
3 provided.

4 Q. There wasn't any statistical analysis, like an
5 extrapolation where there was some mean regression that was
6 identified to see if there was actually some direction of
7 something that was statistically supported as opposed to
8 just, well, let's look at the raw data and see if it's going
9 up or down from year to year; is that fair to say?

10 MR. YAMIN: Objection.

11 THE WITNESS: Again, you are trying to lump every
12 way that IAD data was used into one clean precept here, and
13 I can't say that. I can say that, generally, a lot of the
14 focus and things of IAD and looking at data was based on
15 trend, more or less hot spots, that type of stuff, which I
16 didn't -- in your characterization of raw, it would be in
17 terms of, you know, mean regression and that other type of
18 data, it may have been used through other agencies in the
19 department, but a majority of what I would call data used by
20 IAD was focused on broader scale aggregate types of data
21 looking at what are the overall trends, what are the overall
22 problems, and if there was something that popped in that
23 regard, then that would bring it down to a more focused
24 review.

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1 district and compare them to the volume of complaints in
2 another district and just to see, is there a difference, and
3 then why is there a difference, and can we figure out what's
4 going on. Maybe there is a problem in a district or maybe
5 there is underreporting in one district versus another,
6 something to that effect?

7 A. Again, you know, IAD was focused mostly on
8 investigations, and so when data requests, what you
9 categorize as raw, I'm not sure.

10 Q. Just the numbers, the volume.

11 A. It wasn't always focused on volume. It was
12 focused on trends. It was focused on -- you know, sometimes
13 if there was an identified trend in certain areas that may
14 be focused on search issues, perhaps, you know. And, again,
15 I am not speaking to anything specific, but I am trying to
16 figure out a way to answer your question.

17 Q. And you are getting there, and I'm hoping that you
18 are being clear to my question.

19 You say trend, I mean, were these just sort of
20 looking to see if past years the raw numbers to see, here is
21 a number X in year one and then X plus 50 in year two and
22 then X minus 70 in year three, to see if there was some
23 regularly -- or fluctuation up or down, or something like
24 that? Is that essentially the trends that you're talking

1 BY MR. PROVENZALE:

2 Q. Just so -- I'll get past it, because I think I
3 have the answer.

4 What may have been done by way of actual
5 statistical analyses, where there was some sort of
6 historical data that was, you know, put into -- let's just,
7 for an example, a mean regression to identify it by
8 extrapolation, whether there were any trends or anything
9 that were going -- that were statistically significant,
10 nothing like that was done, to your knowledge? It was more
11 focusing on specific areas by looking at the raw area to see
12 if there was a hot spot, that it was clearly some
13 irregularity from one year to the next or from a couple of
14 years versus the current year to see if something needed to
15 be attended to?

16 A. You are asking me to commit to a very broad-based
17 question, and I can't commit to that because --

18 Q. No, then --

19 A. -- you keep bouncing to different types of things.

20 Q. Let me withdraw my question. I am going to ask
21 you very simply: Are you aware of any type of -- the City
22 of Chicago implementing any type of statistical analysis to
23 other than just a year-to-year comparison of raw data to
24 assess the existence of, for example, trends in complaints

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1 reported?

2 MR. YAMIN: Objection to form and foundation.

3 THE WITNESS: Well, I am aware of because the
4 department is using, you know, PRS, the performance
5 recognition systems, which I believe addresses some of the
6 issues that you are raising, but I don't claim to have
7 expertise there.

8 The other thing, though, I guess the challenge
9 that I am having is, you keep talking about raw data year to
10 year comparison, and the way that the IAD data was used in
11 my opinion was more than that, but was anybody in IAD
12 conducting statistical regression models based on the data
13 received, I can answer no.

14 BY MR. PROVENZALE:

15 Q. The performance recognition --

16 A. System.

17 Q. -- when did that go into -- when was that
18 implemented?

19 A. I don't have the specific dates. I know that it
20 was being piloted while I was still in IAD, so I would
21 assume sometime -- it was under development the entire time.
22 When it was fully implemented was, I believe, sometime last
23 year, but there had been ongoing pilots with regards to PRS
24 for a period of time.

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1 Q. Are you aware of whether or not that system was in
2 place as of February 19th of '07?

3 A. I'm not sure. It may have been under pilot at
4 that time within districts, but I am not sure.

5 Q. Piloting would have been just for specific
6 districts, not city wide, correct?

7 A. Again, with the pilot on that system, certain
8 districts, it was a gradual roll-out, so I couldn't tell you
9 what districts, if any, were using it in 2007.

10 Q. Are you aware, does the City do any type of
11 regular audits on the -- and when I say regular, like an
12 annual audit on the recording of misconduct data?

13 MR. YAMIN: Objection to foundation and form.

14 BY MR. PROVENZALE:

15 Q. And let's just say the incidence of reporting of
16 complaints, not necessarily the incidence of discipline.

17 A. I've got two questions, the City and then what do
18 you mean by audit?

19 Q. Audit meaning that the City of Chicago, not the
20 Chicago Police Department, but some other division of the
21 City of Chicago conducts some statistical examination of the
22 city-wide misconduct reporting data for a given calendar
23 year?

24 MR. YAMIN: Same objection.

1 THE WITNESS: To my understanding, there is not a
2 city department that does that.

3 MR. PROVENZALE: Outside of the police department
4 is what I am talking about.

5 THE WITNESS: Outside of the police department,
6 right.

7 MR. PROVENZALE: I'm done with that questioning.
8 Do you want to take a break?

9 THE WITNESS: Yes.

10 (WHEREUPON, a short recess was had.)

11 MR. PROVENZALE: Back on the record.

12 BY MR. PROVENZALE:

13 Q. Before I move into the next line, I want to follow
14 up on an answer that you had given previously.

15 After an investigation is completed and findings
16 are made, what is the coding procedure at that point as
17 different from the intake? You said the intake versus
18 closing is different, so describe that for me.

19 A. Upon intake the category is generally attached --
20 and, mind you, I'm not familiar with the day-to-day intake,
21 but my understanding of it, in terms of the data stuff, is
22 that upon intake, the findings is attached to the CR, okay,
23 and so by virtue of the fact that if somebody is named on
24 the intake or not, that finding, the category code is

1 attached to that individual; however, at the end of an
2 investigation, you can have different findings for different
3 individuals.

4 If the initial allegation, we will use your
5 example, was a false arrest, and that Officer Jones
6 committed the false arrest, and we know that Officer Jones
7 and Officer Smith were on the scene, it's my understanding
8 that initially both would be categorized, you know, with
9 false arrest. However, upon closing, there is a finding to
10 the CR, whether or not it was sustained or otherwise, and
11 there may be findings to the individuals. So Officer Smith
12 might be deemed culpable and would therefore have a finding
13 for false arrest. Officer Jones might have been found to
14 not have been culpable of false arrest, and so, therefore,
15 it could have a separate finding, or he could have been
16 found culpable of some other misconduct. Perhaps he stole
17 something from him.

18 So Jones would be false arrest and Smith would be
19 theft. So you can have findings of individual to the
20 officer upon close, and that's not possible upon the
21 initiation of the complaint.

22 Q. Okay. I would like to confine -- I am going to
23 narrow your hypothetical, and let's talk specifically about
24 failures to report coding.

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1 As I understand, a failure to report is a code,
2 correct?

3 A. I don't have a table in front of me, but I believe
4 it is.

5 Q. In the circumstance where it comes in, let's say
6 there is --

7 A. Hold on.

8 Q. Sure.

9 A. A failure to report, I know it's a rule violation,
10 I am not sure if it is a specific code violation, so I would
11 have to look at the code violation table to go ahead.

12 Q. In the circumstance where a complaint comes in and
13 it's a false arrest complaint identifying, let's say three
14 officers, in connection with the false arrest, one of whom
15 actually effected the arrest, the other two of whom were
16 allegedly present at the time that the person was placed
17 into custody, and then the investigation is done, and then
18 the investigation is not sustained on the false arrest
19 allegation as to all three. At any time in that type of
20 circumstance, is there ever any coding specific to the other
21 two officers that would identify that as alleged in the
22 initial complaint when it came in, their role was
23 effectively to have alleged to have been present when
24 misconduct occurred by another officer that they otherwise

1 confusing the new system with the old, but the allegations
2 specific to the officer are what are recorded, and so those
3 are sometimes more than the initial CR finding.

4 Q. Meaning that they are broken down more specific to
5 whatever the investigative findings are?

6 A. That's my understanding.

7 Q. Let's assume that, because I believe it is, let's
8 assume that failure to report is one of the coding
9 categories. It was back in this time frame. Are you aware
10 of -- strike that.

11 As you sit here today, you don't know whether or
12 not failure to report was a specific code within the coding
13 categories available back, let's say, prior to February 19th
14 of '07?

15 A. Without the table, I can't guarantee it, no.

16 Q. You were head of IAD in February of '07, correct?

17 A. Correct.

18 Q. And prior to February 19th of '07, did you ever
19 know Anthony Abbate?

20 A. No, I did not.

21 Q. Have you ever heard of his name?

22 A. No, I had not.

23 Q. His father, Carmen Abbate, was a detective in the
24 Chicago Police Department. Did you ever work alongside him?

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1 failed to report, that would be coded as a failure to
2 report, as opposed to the whole thing being code as a not
3 sustained false arrest?

4 A. It would have to be an allegation that was
5 identified during the investigation, and so when you receive
6 an initial allegation, there is usually multiple allegations
7 within that, and so when an officer is interviewed, they
8 would be interviewed on whatever allegations were
9 identified. So within your hypothetical, if one of the
10 additional allegations was a failure to report misconduct,
11 that, to my understanding, would be coded at the end as a
12 not sustained as well.

13 Q. But under what code of misconduct?

14 A. As I already told you, I don't know what the
15 specific code is for that.

16 Q. Okay.

17 A. But the idea being, at the close, the allegations
18 to specific individual officers are coded out.

19 Now, again, I claim no specific knowledge here,
20 and it's been a while since I've had to deal with the ins
21 and outs of IAD data. You stated that you had Dan Kivel
22 here, Dan is intimately familiar with all of that
23 information, and what I can tell you is that at the closing,
24 to my understanding, and I have to make sure that I am not

1 A. No.

2 Q. Did you ever know of him?

3 A. No.

4 Q. His brother, Terry Abbate, also was a Chicago
5 Police officer, did you ever know him?

6 A. No.

7 Q. You never heard of him?

8 A. No.

9 Q. When was the first time that you remember hearing
10 the name Anthony Abbate?

11 A. Probably the day that OPS came over with the
12 videotape.

13 Q. Prior to OPS getting to IAD with the videotape,
14 had you heard that there was an incident involving someone
15 who suspected to be an off-duty Chicago police officer that
16 was recorded on video, but the person's name wasn't known at
17 the time?

18 A. I don't believe I was, no.

19 Q. Did you hear about the video first or did you know
20 that Anthony Abbate was the person who was in a video at the
21 same time? In terms of when you knew the name versus the
22 person in the video?

23 A. I'm not certain. I believe that -- I'm not
24 certain if the name was known at the time that I saw the

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1 video the first time.
 2 Q. Even hearing about the --
 3 A. It might have happened simultaneous. I don't
 4 recall hearing anything about it until I was called down to
 5 help Mike Duffy with the video.
 6 Q. What was the first thing you remember hearing
 7 about just the fact that something was caught on video
 8 involving someone who might have been a Chicago police
 9 officer? Was it IAD calling you and saying, hey, we're
 10 coming over, we want to show you something, or were they
 11 already there?
 12 MS. RUBENS: Objection; form.
 13 MR. PROVENZALE: I am sorry, OPS.
 14 THE WITNESS: The first I recall hearing of it was
 15 when I was called down to the supe's office and OPS was
 16 already there.
 17 BY MR. PROVENZALE:
 18 Q. And who called you down there?
 19 A. I don't recall. I don't know if it was his
 20 secretary or -- I really don't know. I was just told, they
 21 need you down to the supe's office. I don't even know if my
 22 assistant told me.
 23 Q. Do you remember what day this was, calendar wise?
 24 A. I couldn't tell you what day it was calendar wise.

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1 It was after OPS had received the report. It was probably
 2 within the two days, but off the top of my head, I couldn't
 3 tell you what day it was.
 4 Q. Well, what time was it when you had received this
 5 call?
 6 A. To my recollection, it was somewhat later in the
 7 day, probably after 2:00 o'clock.
 8 Q. You went down to the superintendent's office?
 9 A. To the conference room.
 10 Q. To the conference room, okay. Is this attached to
 11 the superintendent's office or a part of it?
 12 A. It's a suite. Yes, the superintendent's suite.
 13 Q. Who was there when you got there?
 14 A. I know that Hiram Grau was there, I know that Mike
 15 Duffy was there. I honestly don't know who else was there.
 16 There were several other individuals, and I am not firm as
 17 to who they were.
 18 Q. Do you remember whether Superintendent Cline was
 19 there?
 20 A. I'm not. I do know that I spoke with him, so I
 21 would assume that he was there, but --
 22 MS. RUBENS: You don't have to guess.
 23 THE WITNESS: Yes. Right. I am not sure.
 24 BY MR. PROVENZALE:

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1 Q. He may have been on the phone, he may have been
 2 there in person, but at some point while you were there, you
 3 spoke with him?
 4 A. I did speak with him while I was down there, yes.
 5 Q. You just don't remember whether it was in person
 6 or on the phone; is that correct?
 7 A. Yes.
 8 Q. Do you remember Sheri Mecklenburg,
 9 M-e-c-k-l-e-n-b-u-r-g?
 10 A. No, I don't recall.
 11 Q. Do you remember Monique Bond being there?
 12 A. I don't recall.
 13 Q. Do you remember anyone else from OPS being there
 14 other than Mike Duffy?
 15 A. No, Mike is the only one I remember being there.
 16 Q. What was going on in the room when you got there?
 17 MS. RUBENS: I object to vague.
 18 You can answer.
 19 THE WITNESS: I was told that OPS had an incident.
 20 Mike was holding a monitor in his arms, and I was told that
 21 they need IAD to help OPS with the investigation.
 22 BY MR. PROVENZALE:
 23 Q. Was the video playing when you walked in, or did
 24 you get the impression that people had already seen it?

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1 A. I believe people there had seen it. I'm not sure
 2 that it was playing when I walked in, and I am not sure if I
 3 saw it then or afterwards.
 4 Q. When you say afterwards, you mean at some point
 5 after you arrived or after you left?
 6 A. After I left. After I left from there, I was with
 7 Mike, so I am not sure if I saw it while we were working
 8 with the video people to try to get it to play out, but I do
 9 know that I saw it at some point within that afternoon.
 10 Q. Just not whether it was in the --
 11 A. Conference room.
 12 Q. -- superintendent's office? Okay.
 13 What was anybody saying that led you to believe
 14 that someone had already seen the video as of the point that
 15 you walked into the conference room?
 16 A. Again, I don't know if it is that they had seen
 17 it, but by virtue of the fact that I was being called down,
 18 you know, Grau, superintendent saying that we have a matter
 19 led me to believe that they had an understanding of what the
 20 matter was.
 21 Q. Did anyone describe what it was that the matter
 22 was when you went down there?
 23 A. Again, I don't recall. So it's, like I said,
 24 either I saw the video at that point and then was taking

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1 action, or I saw it as we went to go get the video
2 developed.

3 Q. What do you recall of the conversation that you
4 had with Superintendent Cline?

5 A. Basically, he wanted IAD to assist OPS. He wanted
6 IAD to assist OPS in whatever way was needed, and he wanted
7 to ensure that we relieve the officer of powers.

8 Q. Did he give you that instruction?

9 A. To my recollection, yes.

10 Q. Was there any other discussion regarding
11 investigative wise what Superintendent Cline wanted IAD to
12 do to help OPS in connection with the investigation?

13 A. No.

14 Q. It was just work together to get whatever help
15 they need to give them help?

16 A. Yes.

17 Q. Can you tell me what, how you interpreted
18 peoples', I guess, demeanor or reaction to whatever it was
19 that they knew about what had occurred that required all of
20 this attention?

21 MS. RUBENS: Objection; foundation, it calls for
22 speculation, calls for a narrative answer, and outside of
23 the competence of this witness.

24 If you can talk to people's demeanor, go ahead.

1 BY MR. PROVENZALE:

2 Q. What do you remember viewing in terms of the first
3 time you saw it? From beginning to end, in terms of you
4 just sort of what it showed?

5 A. You know, the problem with this is, obviously, as
6 you are aware, that it's been seen so many times. To recall
7 what I saw the first time, it's difficult, you know, and was
8 it the first time I saw it or was it the second time I saw
9 it that, you know, certain things. I mean, I saw, you know,
10 a guy beating a woman behind a bar and that man was alleged
11 to be a police officer.

12 Q. At the time that you saw the video the first time,
13 do you remember being aware that the person was identified
14 tentatively or confirmed as Anthony Abbate?

15 A. It had to be, because that was all part of what
16 was going on at that time for IAD, so I must have known it
17 was Anthony Abbate at that time.

18 Q. Do you know who it was that identified him as
19 Anthony Abbate?

20 A. I am assuming that it was OPS, because when the
21 video was brought over, they had already been investigating
22 the matter.

23 Q. Do you know what investigation they had done up to
24 that point?

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1 MR. PROVENZALE: Your interpretation of people's
2 demeanor.

3 THE WITNESS: It was being treated as a serious
4 matter. I mean, I was being called down to provide OPS with
5 whatever help they needed.

6 BY MR. PROVENZALE:

7 Q. Did anyone make any type of comment when you were
8 in the room regarding either the severity of the underlying
9 incident or the non-severity of the underlining incident
10 that was being looked into that apparently was on video?

11 A. Not to my recollection, no.

12 Q. At some point after you first arrived at the
13 conference room, either in the conference room or at another
14 location, you saw the video; is that correct?

15 A. Correct.

16 Q. Do you remember who was present when you first
17 viewed the video?

18 A. I don't, because I don't recall if I saw it in the
19 conference room or if I saw it later.

20 Q. Do you remember, was it on the equipment that
21 Mike had that the video was seen or had it been pulled off
22 of there and recorded and played on something else?

23 MS. RUBENS: Objection; foundation.

24 THE WITNESS: I don't recall.

1 A. No, I don't.

2 Q. Do you know whether they had taken a statement
3 from the woman who was in the video at that point?

4 A. I don't know if they had taken an initial
5 statement. At the point that I was brought in, I don't
6 think that they took a full statement from her, but I don't
7 recall.

8 Q. Do you remember reviewing any documentation of an
9 OPS investigation up to that point by way of either their
10 summaries of interviews or statements of witnesses?

11 A. I never reviewed an OPS investigation, no aspect
12 of it. It was separate and distinct.

13 Q. And when I say review, I mean, just somebody
14 showed you a piece of paper and said, here is a statement
15 that she took, do you want to take a look at it, or that she
16 gave, or here is a summary of a statement that was taken by
17 this OPS investigation of this witness?

18 A. We never did that. As the head of IAD, I never
19 would have seen any of their active investigative
20 information. Now, my detective assigned might have been
21 working with their investigator, but as the head of IAD, I
22 would not have seen that.

23 Q. Would have aside, that did not happen specifically
24 in this case as well, correct?

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1 A. Correct.

2 Q. In the first viewing, do you remember seeing any
3 footage of events occurring after the beating ended, and
4 specifically, anything, footage showing either the phone
5 calls that were being made by people in the bar or the
6 police response to the bar?

7 A. No, I don't recall that from the first viewing.

8 Q. So the first viewing that you recall was simply
9 just beginning to end of what led up to the beating and then
10 basically when the beating stopped and that's about it?

11 A. There may have been a full video, but, frankly, my
12 recollection of, you know, at least at the initial stages,
13 was focused on the actions of the officer who did the
14 beating.

15 Q. As of that point in time, are you aware of any
16 efforts by OPS to obtain the case report of any police
17 officers who responded to the bar?

18 MS. RUBENS: I just want to clarify at that point
19 in time.

20 MR. PROVENZALE: Yeah, I am talking about at that
21 point --

22 MS. RUBENS: When she saw the video?

23 MR. PROVENZALE: Right.

24 BY MR. PROVENZALE:

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1 Q. When you saw the video, were you aware of whether
2 OPS -- and, again, this is an investigation that OPS had
3 done themselves, whether they had obtained the case report
4 from the 25th District showing that police were called out
5 and responded to this bar beating after it had occurred?

6 A. I guess I am having trouble placing myself in
7 terms of what you are asking. You got to understand that
8 when I was called down and I saw this video for the first
9 time, my task was focused on what IAD needed to do, so I
10 wasn't, at least as the head of IAD, very focused on where
11 OPS was in their investigation at that point.

12 Q. Well, even in assessing what IAD needed to do,
13 let's start with, were you aware that police had responded
14 to the bar as of the time that you saw the video so that you
15 were thinking, well, we need to get ahold of the case report
16 to find out what information was in the case report to see
17 what was reported at the bar and anything else, just as part
18 of the IAD investigation?

19 A. Well, from my perspective, what I was doing at
20 that point was taking stuff that you are looking at and
21 assigning that to other individuals. I was working with
22 Mike Duffy to get a monitor recorded in a way that could be
23 digested and got to the state's attorney, etcetera. So my
24 job was to coordinate -- you got to understand, OPS is

1 conducting an investigation separate and distinct. My job
2 was to work on the criminal aspect, so I am calling in the
3 confidential section saying, get a detective over there.
4 I'm also talking to the general section, general
5 investigation section saying we got to relieve powers, when
6 you find this guy to relieve powers, so I am not looking at
7 specific investigative steps at this point, because it had
8 just been dropped in my lap, for lack of a better term, so
9 now I am trying to get the pieces in place to go forward
10 with the investigation.

11 Q. You delegated generally, you handle the
12 investigation and you handle finding the guy so we can
13 relieve him of his police powers?

14 A. Yes.

15 Q. As of the time that you saw the video, you were
16 not aware of whether or not there had been a case report
17 prepared by any officers who may have responded to the
18 scene; is that correct?

19 A. Well, I mean, immediately upon viewing, no, but at
20 some point within the next few hours when we are trying to
21 get all of the pieces in motion, yeah, there was a case
22 report, and I developed information that she reported to OPS
23 in person. But at the time that I viewed the video, I
24 frankly didn't know what I was seeing.

1 Q. I am just trying to get the chronology.

2 So after you see the video, you have some initial
3 delegation of what you want to be done while you are working
4 with Mike Duffy to retrieve the footage off of the hard
5 drive, correct?

6 A. Yes.

7 Q. And then at some point after that, then you begin
8 to learn more information specific to the response of the
9 Chicago police to that bar after the beating occurred; is
10 that correct?

11 A. Correct.

12 Q. When was the first time you saw the case report?
13 Did you see the case report from the 25th District that day?

14 A. At some point I saw the case report. I don't
15 believe it was that first day.

16 Q. Do you remember when it was?

17 A. I don't. I really don't recall when I saw the
18 case report.

19 Q. Do you know who it was that had obtained the case
20 report, whether it was OPS or someone to whom you had
21 delegated the investigation within IAD?

22 A. It could have been either, but IAD would have easy
23 access to the case report. So whether or not they both
24 derived the case report individually, I don't know.

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1 Q. You also mentioned that you were aware, you became
2 aware that the bartender had given a statement to OPS
3 around the time that you learned that there was a -- that
4 the case report --

5 A. Well, no, that's not what I said. I said I was
6 aware that the bartender had -- well, the woman had reported
7 in person to OPS.

8 Q. Okay.

9 A. I wasn't sure whether or not a statement had been
10 taken at the time that I looked at the video, but, I mean, I
11 do know that a statement was subsequently, you know, taken
12 again.

13 Q. At the time that you had seen the video and then
14 you had additional information coming in to you about the
15 existence of the case report and that the bartender had in
16 person gone to OPS to report what had occurred, did you
17 receive any information in this time frame regarding
18 additional allegations of efforts of the police officer to
19 obtain the videotape to destroy it or to keep it from
20 getting into OPS or IAD's hands?

21 A. I wasn't aware of any, I guess, secondary or
22 corollary complaints upon the time that I became aware of
23 this matter. The additional allegations of police inaction
24 or misconduct developed as the investigation developed, but

1 a week, or was it longer after that?

2 A. It would have been within the earlier stages of
3 the investigation. It definitely wasn't the first day.
4 Probably it would be within that subsequent, you know, week
5 period, you know, as information was breaking.

6 Q. Do you remember whether you had learned that
7 information generally about some other obstruction efforts
8 of Mr. Abbate to obtain or destroy physical evidence prior
9 to or after the time that you had first communicated with
10 the State's Attorney's Office with anyone from the State's
11 Attorney's Office?

12 MR. APICELLA: I object based on foundation and
13 mischaracterizes a prior answer.

14 MS. RUBENS: Join.

15 THE WITNESS: You are asking a question in a way
16 that I didn't answer, but I don't know -- I don't recall at
17 which point I learned of any of the, you know, the
18 subsequent allegations specifically. And as far as
19 presentation to the State's Attorney's Office, I can't link
20 those. I don't know when the presentation was or when those
21 allegations were raised. And in this case, there were two,
22 I guess, charging conversations with the state's attorney,
23 so when that came into play, I couldn't tell you.
24

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1 on that first time, within that first framework of hours, I
2 was unaware of that.

3 Q. Do you remember ever, in connection with the
4 investigation of the case, hearing some allegation that
5 Anthony Abbate, through another person, had communicated
6 threats to the owner of the bar and others in the bar that
7 if the videotape was not turned over to Mr. Abbate, that
8 people would be arrested, falsely arrested, leaving the bar
9 for drunk driving, or that people would be stopped and drugs
10 would be planted on them?

11 MS. RUBENS: You can answer the question barring
12 anything you've ever learned from any of your attorneys in
13 this case.

14 THE WITNESS: You asked a very specific question.
15 I would answer no to the specific question, but I did
16 hear --

17 BY MR. PROVENZALE:

18 Q. How about generally?

19 A. I did hear during the investigation that there
20 were allegations that there would be police action or some
21 sort of action against the bar owner and patrons.

22 Q. And at what point do you remember you first heard
23 about that? And let's just put that in reference to when
24 you first saw the video. Was it the same day, was it within

1 BY MR. PROVENZALE:

2 Q. Well, just with respect to the first conversation
3 that you had with anyone from the State's Attorney's Office
4 about anything in connection with the case. You cannot
5 place it temporally, either before or after, as to when you
6 learned about these other allegations of efforts of
7 Mr. Abbate related to arresting patrons or the owner of the
8 bar; is that correct?

9 A. That's correct.

10 Q. You said that you were with Mike Duffy, efforts to
11 retrieve the recording off of the hard drive, were you
12 ultimately successful, or was someone in the Chicago Police
13 Department ultimately successful in getting recordings off
14 of the hard drive?

15 A. You know, I'm not sure if it was the CPD that did
16 it, but clearly ultimately we got it off of the hard drive,
17 I guess, onto a disk.

18 Q. Were multiple copies made or was it just one copy
19 that you made --

20 MS. RUBENS: Objection.

21 BY MR. PROVENZALE:

22 Q. -- the first time when you were aware of it?

23 MS. RUBENS: Calls for speculation.

24 THE WITNESS: I am not certain how many copies

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1 were made. I know that one copy was made for OPS, and I
2 believe one copy was made for IAD, but I am not sure.

3
4 BY MR. PROVENZALE:

5 Q. So did you retain a copy and then just deliver it
6 back to your lieutenant or officer who was handling the
7 case, or what happened with the copy for IAD?

8 A. Again, I am not certain if there was a copy for
9 IAD. If there was, it would have been attached to the
10 criminal investigation file. So the investigator would have
11 needed it, so they would have had it.

12 Q. When you delegated the investigative aspect of it
13 to the confidential investigation section, did you identify
14 a specific investigator you wanted to use on that, or did
15 you just delegate it to Lieutenant Calloway for him to pick
16 an investigator?

17 A. I told them I needed a detective, considering
18 there is a limited number of detectives, but aside from that
19 I didn't identify a specific individual.

20 Q. Okay. Let's talk about the manner in which you
21 had delegated the assignments.

22 Did you meet individually with or together with
23 Lieutenant Calloway and Lieutenant Naleway to tell them what
24 you wanted done, or how did you communicate the delegation?

1 Dave? I'm not sure.

2 Q. Whatever the sequence of events was, when you met
3 with Lieutenant Naleway, you were aware of Anthony Abbate's
4 name at that point; is that correct?

5 A. Yes.

6 Q. And you gave him the name and you told him what
7 the general incident involved?

8 A. Right.

9 Q. Did you give him any specific directions as to how
10 to locate this individual, or did you say, just find him
11 and, you know, carry out your responsibility?

12 A. Dave is an expert in locating people, that's his
13 job, and so Dave was told that he needed to be relieved of
14 his powers and so --

15 Q. Okay. The phone call that you had with Lieutenant
16 Calloway, do you recall when it was that you had that phone
17 call?

18 A. Again, you know, it's multidimensional at some
19 point, within the time frame of talking to Dave, the
20 computer people, and trying to get going on that, so --

21 Q. What did you tell Lieutenant Calloway to do
22 specifically in terms of carrying out the investigation to
23 assist OPS?

24 A. I informed him that OPS had an investigation in

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1 A. Lieutenant Naleway worked on the same floor as I
2 did, so he had the advantage, or disadvantage, of a
3 face-to-face delegation. Lieutenant Calloway works in an
4 off-site location, and so that would have been a phone call
5 to him. And the idea was that Dave, Lieutenant Naleway, was
6 working with Mike on -- he stepped in to work with the
7 computer forensic section and the relief of powers, and
8 Lieutenant Calloway was dealing with the criminal
9 investigative aspect.

10 Q. When did you first meet with Lieutenant Naleway?
11 I mean, was it right after you had gotten the copy of, or
12 copies were made of the video --

13 A. No.

14 Q. -- or was it the next day? When was it?

15 A. No. You're looking at this very linearly, and
16 that's not what happened. I mean, I had a multilevel
17 response going, and with Lieutenant Naleway, as I walked
18 back from the superintendent's conference room, I grabbed
19 Dave and said, okay, this is what I need. Now, did I go
20 downstairs first and try to get the computer people first to
21 start working with Mike and come up and get Naleway? That's
22 a possibility. But I know at some point Dave was down with
23 the computer people. So did we meet with Dave and then go
24 downstairs and did I go downstairs first and come up and get

1 which there is a police officer who was beating a woman on a
2 videotape, and that we are to work with OPS in bringing this
3 to a criminal charge, and I needed a detective to work it.

4 Q. As of that point did you have any conversation
5 with Lieutenant Calloway where you expressed your opinion as
6 what charges were appropriate?

7 A. I would say not initially, no.

8 Q. Well, let me ask you: The first time you saw the
9 videotape, what was your impression of what criminal charges
10 were supported by what was shown in the video?

11 MS. RUBENS: Objection. It calls for a legal
12 conclusion, incomplete hypothetical.

13 You can answer.

14 THE WITNESS: The first time I saw the video it
15 was more or less focused on disgust and knowing this police
16 officer should not be a police officer. Criminal charges,
17 you know, I knew that this guy was going to be charged one
18 way or another, but as to what were appropriate charges,
19 that didn't enter my mind on the first viewing of it.

20 BY MR. PROVENZALE:

21 Q. Do you remember when it was that you had in your
22 own mind come to a decision as to what you felt were the
23 appropriate criminal charges to be sought?

24 A. As the head of the Internal Affairs Division, I

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1 had tasked this criminal investigation to the detective and
2 to the unit it was responsible for, so my personal opinion
3 shouldn't and did not enter the equation, because, frankly,
4 it is the investigator's responsibility to get and identify
5 the evidence and present it to the state, and so I would
6 not, nor did I, you know, put an influence on that.

7 Q. Well, I am not saying whether you put an influence
8 on anything, I am asking you, in your mind, when did you
9 come to a conclusion in your own mind as to what the
10 appropriate criminal charge was for what was recorded in
11 that video?

12 MS. RUBENS: If ever.

13 MR. PROVENZALE: Yeah, if ever. If you never came
14 to a conclusion, then you never did.

15 THE WITNESS: Well, I did direct -- it wasn't that
16 first day. It was probably as more information came in or
17 we were able to develop information and I became aware of
18 investigative information. Mind you, there was a fairly
19 short period of time between the initial video and then the
20 presentation to the state, we were going for felony charges.
21 And, I mean, that was known probably pretty early on, but I
22 would not say upon the instant viewing of the tape.

23 BY MR. PROVENZALE:

24 Q. Okay. And that's what I -- I understand this is a

1 some point after you had left the conference room?

2 MS. RUBENS: Objection; foundation.

3 THE WITNESS: You are putting something forth that
4 there was no conversation by me with anybody down in the
5 superintendent's conference room about charges. I was told
6 to help OPS with the criminal investigation, and that's what
7 I was doing. The decisions as to how we would present that
8 case I guess came about, not that night, clearly, but after
9 IAD had been involved in the investigation for a period of
10 time, and whether it was the following day or the day after,
11 I can't tell you, but I do know that prior to the meeting
12 with the State's Attorney's Office, that we were going for
13 felony charges.

14 BY MR. PROVENZALE:

15 Q. Okay. Did you participate in any conversation
16 with any either superior or subordinate officer discussing
17 the Chicago Police Department's position when you were going
18 to approach the state's attorney and present the case to
19 them?

20 A. As to the state's attorney presentation? No.

21 Q. No one -- there was no discussion prior to your
22 first contact with the state's attorney with anyone at the
23 Chicago Police Department where it was discussed as to
24 whether felony charges would be sought or which felonies

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1 fluid process, and this is sort of an evolving information
2 circumstance, but, as you've described, at some point you
3 were going for felony charges, you being the IAD, the
4 Chicago Police Department?

5 A. Correct.

6 Q. And so at what point did that discussion begin, at
7 least in terms of your participation in it, prior to the
8 time that you first contacted the State's Attorney's Office?

9 A. Well, it was standard operating procedure with IAD
10 that any time that there was a potential for felony
11 charging, we would go for felony charging, okay. So we had
12 cases where it would not normally be a felony charge and so
13 we would still go for a felony, just for the fact that we
14 felt it was best practice that we would present the evidence
15 and it was the state that had to make the decision so we at
16 least can say that we went for felony charges. And from the
17 perspective of the IAD protocol for criminal arrests, that's
18 what we always followed.

19 Q. Well, when in this case did the discussion begin?
20 I mean, did it begin right off the bat where there was a
21 discussion in the conference room that, you know, we need to
22 work this case up because we are going to pursue and seek
23 approval from the state's attorney for felony or felonies in
24 connection with this, or did that conversation come up at

1 would be requested?

2 MS. RUBENS: You mean with her and anyone else?

3 MR. PROVENZALE: Yes, with you and anyone else.

4 THE WITNESS: Superiors, no.

5 MR. PROVENZALE: Superiors or subordinates. I am
6 not limiting it. I am saying with anyone prior to the time
7 that you went -- when you first communicated with the
8 state's attorney.

9 THE WITNESS: Well, it would have been with a
10 subordinate, because it was my subordinate that presented it
11 to the state.

12 BY MR. PROVENZALE:

13 Q. Who did you speak with?

14 A. Well, Lieutenant Calloway, Dion Boyd. I don't
15 know if there was a sergeant involved in the investigation.
16 I had had conversations with Lieutenant Naleway, but I don't
17 know if it was relevant to criminal charges.

18 Q. And this conversation that you had with Lieutenant
19 Calloway and Dion Boyd was prior to the time that you first
20 communicated with the state's attorney, or when was it in
21 relation to that?

22 A. You are referencing two different events. There
23 was a presentation to the state, and you are also
24 referencing communication with the state.

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1 Q. I am talking about -- I want to be clear about
2 this. I am talking about the first time that you
3 communicated with the State's Attorney's Office regarding
4 this case. In reference to that first communication, did
5 you have any conversation with anyone in the Chicago Police
6 Department, whether they be superiors, subordinate officers,
7 regarding whether felonies would be sought or what felony
8 would be requested?

9 MS. RUBENS: I just object to the form and not
10 lying what the foundation of the first communication was.

11 THE WITNESS: It's a very broad-based question
12 that you are asking me, too. So, to the extent that you are
13 asking, did I talk to anybody inside the police department
14 before I spoke to the state on this matter, the answer would
15 be yes.

16 BY MR. PROVENZALE:

17 Q. Regarding charging, specifically?

18 MS. RUBENS: Just object to form. That's not what
19 you asked.

20 THE WITNESS: I don't know if I talked to anybody
21 about charging before I first talked to the state on this
22 matter.

23 BY MR. PROVENZALE:

24 Q. Okay. When is the first time that you -- when is

1 to have the actual conference with the state's attorney; is
2 that correct? This phone call that you are talking about?

3 A. You know, I am not real clear on that. I believe
4 it was prior, but I'm not sure if it was after. But what I
5 normally did was if we had a case coming into the state, I
6 would contact the party that would coordinate that case
7 first and say just that we had something come in. I
8 honestly don't know if I did that the day before or if I did
9 it somewhere within the same day of the presentation.

10 Q. Did you place the phone call to the State's
11 Attorney's Office or did they call you?

12 A. You know, I don't recall, but within the context
13 of me giving notice to the state, it would most likely be
14 that I called them.

15 Q. Were you in your office when you called them or
16 were you somewhere else?

17 A. I don't recall.

18 Q. Who did you speak with at the State's Attorney's
19 Office?

20 A. It would have been Tom Bilyk.

21 Q. Was anyone present in the room with you when you
22 were speaking with Tom on the phone?

23 A. I don't recall.

24 Q. Do you recall whether or not the phone call, you

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1 the first communication that you recall having with the
2 state's attorney in connection with the case?

3 A. It is my belief that before the charging meeting,
4 which happened with OPS and my detective and my lieutenant,
5 that I had a conversation with the state stating that we had
6 a matter and that we would be looking for charges.

7 Q. And the presentation that you are referring to,
8 you didn't attend that meeting, correct?

9 A. Correct.

10 Q. Let's just talk about the first communication
11 that you had with the state where you directly had a
12 communication with the State's Attorney's Office. Was that
13 in person or by telephone?

14 A. It would have been by phone.

15 Q. And did that phone call occur the night -- the
16 same day that you had viewed the video or a day after that?

17 A. I can't tell you the specific date. It most
18 likely wasn't that same night because of what I recall as
19 being late in the day and how things were breaking out, so
20 the conversation with the state either would have been maybe
21 the same day it was presented by my staff or, like, the day
22 before that.

23 Q. And whatever the day was, it was prior to the time
24 that Lieutenant Calloway and Dion Boyd had gone over to OPS

1 had it on speaker or whether you had it up to your ear?

2 A. I don't recall.

3 Q. What do you remember telling Tom Bilyk about the
4 case?

5 A. Like I said, the only recollection I have right
6 now is that I spoke with Tom at some point stating that we
7 had a case that would be coming, and basically gave the
8 outline, you know, of what the video showed.

9 Q. Did you express any opinion to him during the
10 conversation as to the severity of what had happened and --
11 well, let's start with that. With the severity of what was
12 on the video?

13 A. You know, there were several conversations, I
14 believe, with the state's attorney, so when we get to, what
15 did you say, when, where, and why, I'm not real clear on
16 that.

17 Q. Okay.

18 A. You know, I do know that I talked to Tom Bilyk
19 saying that we had a matter coming in. I do know that my
20 people presented to Tom on what the case was, and I do know
21 that there was -- that the state's attorney said that there
22 wasn't a felony here, and I do know that we had a
23 conversation regarding that. Now, whether or not that was
24 prior or after, I'm not sure, but based on the progression

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1 of things, I would think that that was either that same day
2 or somewhere after where we talked about what the charges
3 were.

4 Q. So, as you sit here today, you do not recall
5 whether or not your discussion with Tom Bilyk about the
6 propriety of charging was this first phone call that you had
7 with him prior to the time that Lieutenant Calloway and
8 Dion Boyd had conferenced with Tom over at OPS or whether
9 you had some communication after that conference?

10 A. You are referencing a discussion and I think what
11 I am testifying to is that there were several discussions.
12 When specific things were stated, I'm not sure, and you are
13 also identifying a conference with Tom Bilyk, which I
14 believe I testified that it was a presentation. The concern
15 that we had in presenting and whether or not this
16 conversation was prior or after, was that in my experience
17 of working with the Chicago Police Department, the
18 identifier for aggravated battery was physical injury, and
19 this was a challenge for us, which was, you know, we weren't
20 certain if the state was going to approve felony charges.

21 Q. I appreciate that. What I am trying to find out
22 is your best recollection of the sequence of events, and so
23 I am trying to make sure that I understand what you do
24 recall and don't recall. My specific question is, as to any

1 the effect of the video looks bad, but it's not -- it isn't
2 as bad as it looks, she wasn't hurt very bad, and he missed
3 a lot of the punches that he threw. Do you ever remember
4 having any conversation with him prior to the time that your
5 officers made the presentation to the state's attorney to
6 that effect?

7 A. I don't recall any conversation like that.

8 Q. Do you recall ever having any conversation with
9 Tom Bilyk where you relayed to him that you felt that the
10 appropriate -- that misdemeanor battery charge was your
11 recommendation for the appropriate charge?

12 A. I can tell you I never would make the
13 recommendation of a simple battery charge on that.
14 We were going for a felony.

15 Q. So your answer is, no, you never said that to
16 Tom Bilyk, correct?

17 A. Correct.

18 Q. I take it that after the presentation that your
19 officers had made, that they reported back to you what the
20 state's attorney decision was?

21 A. Yes.

22 Q. When did that occur? Do you remember whether it
23 was the same day that the presentation was made or was it a
24 different day?

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1 conversation that you had -- the first conversation that you
2 had with Tom Bilyk where the topic of the -- where some
3 topic of the conversation involved what were the proper
4 charges for what was depicted in that videotape, you don't
5 recall whether or not that topic of conversation came up
6 with Tom Bilyk before or after your officers had made the
7 presentation to the state's attorney; is that correct?

8 MS. RUBENS: Object to asked and answered and
9 foundation.

10 MR. PROVENZALE: The first time you had that topic
11 come up.

12 THE WITNESS: I mean, I can't answer what I said
13 in the first time. I mean, all I know is that I had a
14 conversation with Tom, I had several. We would be seeking
15 charges, and we were going to seek felony. I don't know
16 when I had that conversation. I don't know if I had two
17 conversations or three before my people showed up. And I do
18 know that my people showed up and I know that I talked to
19 Tom afterwards. Now, how long all of these conversations
20 happened, I'm not sure.

21 BY MR. PROVENZALE:

22 Q. Do you remember ever having a conversation with
23 Tom Bilyk before your officers had made the presentation to
24 the state's attorney, where you had told Tom something to

1 A. I'm not certain, but I'm pretty sure it's the same
2 day because they would have come over from OPS.

3 Q. Did both of them tell you about it, one or the
4 other?

5 A. I don't recall, but it would be likely that both
6 of them were in my office telling me. But I don't recall.

7 Q. Whoever it was, whether it was one or both, what
8 do you remember them relating to you?

9 A. That the state didn't see that this was a felony
10 charge and they weren't going to charge the felony.

11 Q. Can you tell me what -- did Lieutenant Calloway
12 ever make any comment to you that you recall in the context
13 of this whole presentation report that they gave you that he
14 argued with the state's attorney about their decision or
15 determination that felony charges weren't warranted?

16 A. I know that Lieutenant Calloway was not in
17 agreement, and I believe that he was upset. As to what
18 specifically he argued with the state, I don't recall.

19 Q. What I am asking specifically, do you remember him
20 telling you, I argued with them, when he reported back to
21 you about what had occurred? I understand that you --

22 A. Right. Right.

23 I don't understand him saying that I argued with
24 them, but it was Lieutenant Calloway's position that the

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1 state was just not looking at this the right way.

2 Q. Did Detective Boyd ever tell you that he had
3 argued with the state's attorneys who were at that
4 presentation about their decision that felony charges were
5 not warranted?

6 A. I believe that -- you know, I only recall really
7 speaking to Keith about that. I recall Keith's stance on
8 that. I'm sorry, Lieutenant Calloway's stance on that. I
9 don't have a clear recall of anything Dion said to me.

10 Q. After you had received the report back from them
11 that the state's attorney was not approving felony
12 charges -- well, strike that.

13 At the time that you received that back from them,
14 do you recall whether you were aware of the nature and
15 extent of the injuries that the bartender had sustained?

16 A. I'm sorry?

17 Q. As of the point in time when Lieutenant Calloway
18 comes back with or without Dion Boyd and reports to you what
19 the state's attorney's decision is after the presentation,
20 at that point in time do you remember whether you were aware
21 of what the nature and extent of the bartender's injuries
22 were?

23 A. I didn't have the full extent, but the general
24 extent of the injury, yes.

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1 Q. What was your understanding at that time of what
2 the general extent of the injury was?

3 A. Bruising, soreness, pain.

4 Q. In your mind, what was the basis for seeking
5 felony -- that the Chicago police were seeking felony
6 charges then, if the injuries to the bartender were clearly
7 not great bodily harm?

8 MS. RUBENS: I just object to form.

9 THE WITNESS: Because it was a police officer
10 involved.

11 BY MR. PROVENZALE:

12 Q. And that's it? That was your understanding
13 basically as a policy matter, you were going to ask for
14 felony charges just because it was a police officer and what
15 was shown on the video, not necessarily that the facts
16 supported it?

17 MS. RUBENS: I object to policy matter and the
18 witness' personal opinion.

19 THE WITNESS: It's not a policy matter. The idea
20 being that the actions of the police officer, as identified
21 in the video, were clearly egregious.

22 It is true that in my experience with the police
23 department and as a detective, that great bodily harm is
24 normally the predicate of getting a felony approval on

1 aggravated battery from the State's Attorney's Office;
2 however, given the, I think the aggressiveness shown by the
3 officer and the fact that it was a police officer, we felt
4 that from maybe a basis for felony charges to the State's
5 Attorney Office and that's why we sought it.

6 BY MR. PROVENZALE:

7 Q. At this time were you aware of the subsection of
8 the ag bat statute that allowed for the enhancement of a
9 battery, a simple battery to an aggravated battery based
10 upon a specific location of where the events occur?

11 A. No, I wasn't.

12 Q. So after you hear the report back from
13 Keith Calloway, did you contact Tom Bilyk to find out what
14 was -- well, did you contact him?

15 A. I recall talking to Tom after the decision was
16 made. I don't know if it was that day or, you know, shortly
17 subsequent within the next two days.

18 Q. You called him?

19 A. Again, I don't recall that.

20 Q. And what do you remember telling him in this phone
21 call?

22 A. I think that just -- the overall conversation, as
23 I recall it, was just speaking to the fact that, you know,
24 you are not going to approve the felony, no, it's not there.

1 And the focus on that -- well, we're going to, you know,
2 then we will do what we got to do.

3 Q. Meaning on your end that you will do what you have
4 to do?

5 A. Right. Right.

6 Q. Prior to the time that you called Tom or after,
7 did you go up your chain of command to advise the
8 superintendent that the state's attorney had rejected
9 charges?

10 A. I didn't state that I called Tom. At some point I
11 spoke to Tom.

12 Q. I am sorry. Before or after you spoke to him?

13 A. Yes. At some point, yes, I did inform the
14 superintendent that the state was not going to approve
15 felony charges.

16 Q. Did you advise him of that before you had spoke to
17 Tome after the presentation, or the first time you spoke to
18 him or after?

19 A. I don't know. My conversation with Tom doesn't
20 relate to me to the conversation with the superintendent.
21 I don't know when I spoke to Tom and when I spoke to the
22 superintendent.

23 Q. What was the superintendent's response to you
24 relaying to him the state's attorney's decision?

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1 A. I don't really recall any response.

2 Q. As of the point in time that you had met with
3 Keith Calloway after the presentation and the state's
4 attorney rejecting charges, as of that point in time, were
5 you aware of the additional allegations against Mr. Abbate
6 that he had threatened people at the bar to make false
7 arrests or plant drugs on patrons leaving the bar?

8 A. I don't believe I was, because if I was, that
9 would have been something that we could have presented, so I
10 don't have a recollection that I knew at that time.

11 Q. Do you know whether or not -- well, I take it,
12 then, that you don't know whether Tom Bilyk knew about those
13 or anybody at the state's attorney knew about those
14 allegations as well at that time; is that correct?

15 A. That's correct.

16 MS. RUBENS: Foundation.

17 BY MR. PROVENZALE:

18 Q. So what was Superintendent Cline's reaction?

19 MS. RUBENS: Asked and answered.

20 THE WITNESS: I don't recall what his reaction
21 was. I don't even know if I informed him in person, but I
22 informed him.

23 BY MR. PROVENZALE:

24 Q. I mean, did he give you any direction as to, you

1 the charging decision was made?

2 A. No, I didn't direct anybody to do that.

3 Q. Would you agree with me that if that was done,
4 that that would have been improper?

5 MS. RUBENS: Objection; foundation, incomplete
6 hypothetical.

7 THE WITNESS: You shouldn't have somebody sign a
8 blank complaint form, I agree that that's improper.

9 BY MR. PROVENZALE:

10 Q. At any time prior to the presentation did you ever
11 direct either Keith Calloway or Dion Boyd to have the
12 complainant sign a misdemeanor battery complaint?

13 A. You mean the presentation to the state?

14 Q. At any time prior to the presentation that
15 Keith Calloway and Dion Boyd made to the state that you
16 characterized as a presentation, did you ever direct either
17 of them to go and have the bartender sign a misdemeanor
18 battery complaint?

19 A. No.

20 Q. Would you agree with me that given the fact that
21 the case was being presented to the state's attorney, or was
22 going to be presented to the state's attorney, that no
23 complaint should have been filed or should have been signed
24 by the complainant bartender until after the state's

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1 know, go back to them or whether he said, let me contact
2 them or anything like that?

3 A. I don't recall.

4 Q. At any point in time during the course of -- at
5 any point in time after you had delegated the investigation
6 to Keith Calloway up until the time where you met with him
7 after the presentation, were you given any status updates on
8 the confidential investigation division's investigation into
9 the case as to, you know, what they were doing and how
10 things were progressing?

11 A. I'm sorry, what's the time frame that you are
12 giving me?

13 Q. Between when you told Keith Calloway, this is your
14 job, go do it, conduct the criminal investigation, and when
15 he reported to you after the presentation. Did he give you
16 any updates as to what was going on with his investigation?

17 A. I'm sure he did. I don't know. I don't recall
18 what the specific updates were.

19 Q. Do you know of any reason why -- well, strike
20 that.

21 Did you ever direct anyone in the confidential
22 investigation section, and specifically either Keith
23 Calloway or Dion Boyd, to have the bartender sign a blank
24 complaint form to be filled in at some point later on once

1 attorney had reviewed the case?

2 MS. RUBENS: Objection; incomplete hypothetical.

4 BY MR. PROVENZALE:

5 Q. Based upon what you wanted to be carried out in
6 connection with the investigation?

7 MS. RUBENS: Same objection.

8 THE WITNESS: Right. We shouldn't have had her
9 sign a misdemeanor complaint, because we were going for
10 felony charges.

11 BY MR. PROVENZALE:

12 Q. After you had reported to Superintendent Cline
13 about the state's attorney's decision, did you have any
14 further communications with Tom Bilyk about the state's
15 attorney's charging decision?

16 A. Did I have any further conversation after
17 initially telling him that the state didn't charge?

18 Q. Yeah. Generally, the sequence of events are: You
19 have a communication with Tom Bilyk prior to the
20 presentation, you don't recall exactly what was discussed in
21 that communication other than to let him know, we are going
22 to present something to you, correct?

23 A. Correct.

24 Q. And then the presentation occurs. And then after

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1 you learn that the state's attorney rejected charges, you
 2 have another conversation with him, correct?
 3 A. Correct.
 4 Q. And in the subsequent conversation, you ask him to
 5 explain what happened and he says, well, it's not there.
 6 Something to that effect, correct?
 7 A. Correct.
 8 Q. And then you report to Superintendent Cline the
 9 state's attorney's decision either in person or over the
 10 phone, correct?
 11 A. Correct.
 12 Q. After that did you have any further conversation
 13 with Tom Bilyk regarding the state's attorney's decision as
 14 to charging the battery aspect of the case? I mean, at some
 15 point they approve charges, right?
 16 A. Right.
 17 Q. Okay. That's what I am talking about is, did you
 18 have any conversation -- let's put it this way: Did you
 19 have any further conversation with him before you found out
 20 that they had changed their mind or approved charges?
 21 A. This case was problematic at a lot of levels, and
 22 so, you know, I am sure that I conversed with Tom at some
 23 point additionally. I mean, I didn't have just two discreet
 24 phone calls with him and then walked away from it. What the

1 MS. RUBENS: Objection; foundation, calls for
 2 speculation.
 3 THE WITNESS: The only -- I mean, I don't know
 4 what caused the state's attorney to change their mind.
 5 BY MR. PROVENZALE:
 6 Q. What is your understanding of why they did it?
 7 MS. RUBENS: Are you asking for her personal
 8 opinion?
 9 MR. PROVENZALE: Yeah, your personal opinion.
 10 THE WITNESS: It is my belief that they found that
 11 they could actually bring forth the section that they
 12 brought forth and get an aggravated battery charge on it. I
 13 have never seen that charged in Cook County before. I think
 14 they had to do some legal research to see whether or not
 15 they could carry it out.
 16 BY MR. PROVENZALE:
 17 Q. Did anybody at the State's Attorney's Office,
 18 whether it be Lauren Freeman, Scott Cassidy, Dave Navarro,
 19 Tom Bilyk, anybody else, ever tell you that they had never
 20 rejected felony charges, they had deferred the decision
 21 until further investigation?
 22 A. I believe it was after Abbate was arrested for the
 23 battery, but I don't know if it was when I got notified that
 24 they wanted to charge him with the aggravated battery or --

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1 nature of that was, etcetera, I am not certain, but it
 2 wasn't Tom that informed me that the state's attorney had
 3 changed their mind on the charges.
 4 Q. Who told you that?
 5 A. I believe it was Scott Cassidy.
 6 Q. And when did he tell you that?
 7 A. After we had arrested Abbate for the misdemeanor
 8 battery.
 9 Q. When you spoke with Scott Cassidy and he told you
 10 that there was going to be a felony charge, were you aware
 11 of whether or not the video had hit the media by then?
 12 A. Oh, I am sure it had.
 13 Q. So, to the best of your recollection, the
 14 chronology is that Abbate is arrested on the misdemeanor
 15 charge, and then at some point after the video hits the
 16 media, and then you have a conversation with Scott Cassidy
 17 and he tells you, we're approving the felony charge?
 18 A. You know, I'm not sure when the -- I believe the
 19 video was out before Abbate was arrested on a misdemeanor,
 20 but I'm not sure. So, again, I don't know when the -- you
 21 know, when the video was released.
 22 Q. Well, what's your understanding of the
 23 circumstances that prompted the state's attorney to, I
 24 guess, in your opinion, change their mind?

1 it had to be at that time. So at that point -- the
 2 conversation that you are stating, I never really had. The
 3 conversation that I had was that they had to charge him on
 4 an aggravated battery, why did we arrest him for the
 5 misdemeanor.
 6 Q. That's what I am getting at. And that was with
 7 Scott Cassidy, correct?
 8 A. I believe it was Scott.
 9 Q. And he expressed to you in the context of this
 10 conversation that it was his understanding that the State's
 11 Attorney's Office had never said no to felony charges, just
 12 that they deferred it until some further date when either
 13 they were doing additional research or waiting for
 14 additional investigation to be done, or something like that?
 15 A. No, that wasn't really conveyed in that
 16 conversation. It was more or less that, well, we wanted to
 17 charge him with a battery, what are you doing arresting him
 18 for a misdemeanor.
 19 Q. Meaning they wanted to charge him with the
 20 aggravated battery?
 21 A. Aggravated battery.
 22 Q. It was your understanding in this conversation
 23 that you had with Scott after Abbate had been arrested for
 24 the battery?

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1 A. The misdemeanor.

2 Q. The misdemeanor. That he was arguing, for lack of
3 a better word, about why -- that it was his understanding
4 that an aggravated battery was going to be charged, and why
5 did you arrest him for a simple battery. Did I get that
6 right?

7 A. No. The conversation I had, and, like I said, it
8 was after the misdemeanor battery arrest by CPD. There was
9 a call from the State's Attorney's Office, and I believe it
10 was Scott Cassidy who stated that, well, we were looking to
11 charge it individually with an aggravated battery. The
12 overall gist of the conversation, I don't know if there was,
13 you know, a back and forth, but I stated, well, CPD was, you
14 know, informed that you guys weren't going to charge a
15 felony. And at that point that's when there was some relay,
16 and it wasn't relative to, well, we're doing an ongoing
17 investigation or we wanted -- yeah, any of the technical
18 aspects of continued felony investigation was that, well,
19 no, we have a charge that we can place. And so at that
20 point, I was like, well, fine. We can upgrade the charge in
21 court. What do you want done at this point?

22 Q. In this conversation with Scott, did you ever
23 challenge him to say, well, where did you get the idea that
24 if you had approved felony charges, we met with Tom and

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1 or the other?

2 MS. RUBENS: Asked and answered three times.

3 THE WITNESS: You know, I don't know if Scott and
4 I had the particular conversation. I do know that once
5 Abbate was arrested for the misdemeanor, there was a
6 conversation in regards to the state attempted to state that
7 they didn't deny a felony charge.

8 BY MR. PROVENZALE:

9 Q. Who had that conversation, to your knowledge?

10 A. I honestly don't recall. I know that it was
11 relayed to me through Lieutenant Calloway, and I could have
12 had that conversation with Scott as well. You know, there
13 are so many things going on in this investigation that when
14 and what was said, but at some point the issue that you
15 raise was that the state asserted that they didn't deny
16 charges, and CPD asserts that the state did deny charges at
17 that first meeting.

18 Q. Right. That's what I want to get a handle on.

19 At what point in time did the State's Attorney's
20 Office convey that to anyone at CPD that you have learned
21 about or directly to you?

22 A. It was only after the misdemeanor arrest, and I
23 believe it was in the conversation that I had with Scott
24 that they had a felony charge. Now, whether or not there

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1 Lauren, and they said there is nothing there.

2 A. I don't know if it was in that conversation.

3 You have to understand, we wanted felony charges
4 from the get-go, so the fact that Scott identified a charge,
5 great, let's go for it. But I'm sure that there were
6 subsequent conversations in regard to you identified because
7 the idea then became, well, when was this identified and how
8 was it identified. And, frankly, at the end of the day as
9 the head of IAD, I had a felony charge, let's get it placed,
10 and we will deal with the rest of it.

11 Q. Well, after the misdemeanor arrest happened is
12 when you had these conversations, conversation or
13 conversations with Scott about them wanting a felony charge,
14 is that correct?

15 A. Right.

16 Q. Were any of those conversations to the effect that
17 Scott was relaying to you that his understanding was that no
18 one from the State's Attorney's Office had rejected felony
19 charges previously in that he was either angry or disagreed
20 with the department's decision to arrest Abbate on a
21 misdemeanor battery --

22 MS. RUBENS: Objection.

23 BY MR. PROVENZALE:

24 Q. -- before that they had made any decision one way

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1 was a back and forth about when and how and who and that
2 conversation, I am sure that came at some point, but I don't
3 know if it was in that conversation.

4 Q. Did Lieutenant Calloway or Dion Boyd ever tell you
5 all of who attended that presentation at OPS?

6 A. The ones that I know were there, and whether or
7 not that was everybody, was Calloway, Boyd, Duffy, Freeman
8 and Bilyk. Now, whether or not I had a sergeant there and
9 whether or not OPS had an investigator there, I don't
10 recall.

11 Q. Do you remember whether Sergeant Maraffino was
12 there?

13 A. I don't recall, but I don't think that he would
14 have been.

15 Q. Parallel or contemporaneous with this whole
16 investigative track was also your direction for the location
17 and removal of police powers of Mr. Abbate; is that correct?

18 A. Correct.

19 Q. In connection with that whole sequence of events,
20 let's just generally, did you get regular updates from
21 Lieutenant Naleway about how the efforts were going to
22 locate? Let's start with locating.

23 A. Right. That first night, basically, when they
24 went out, they couldn't find him, so he let me know that.

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1 Q. Okay.

2 A. I wasn't getting hourly reports or, you know, it
3 had taken some time because Abbate had removed himself from
4 the jurisdiction, be it in a hospital or whatever, so I
5 wasn't getting hourly updates. But I was generally being
6 updated.

7 Q. I want to get a handle on it, the time line.

8 What do you remember with respect to when you
9 first delegated the responsibility to Lieutenant Naleway's
10 section hearing that Abbate was in some sort of a hospital
11 or a facility?

12 A. It would have been probably within the first
13 couple days that we were looking for him.

14 Q. Who was it that informed you of that, was it
15 Lieutenant Naleway?

16 A. I believe it was.

17 Q. Do you recall how it was that he -- did he tell
18 you how it was that he learned that?

19 A. Not that I recall.

20 Q. Did he tell you he knew which facility Mr. Abbate
21 was believed to be in?

22 A. Not that I recall.

23 Q. What's your understanding as to the ability of the
24 Chicago police to question any suspect in a criminal case

1 Q. Did you ever inquire of Lieutenant Naleway about
2 why there was no further information about where this
3 facility was and whether there was any follow-up to find out
4 where Mr. Abbate was so that it could even be determined if
5 access would be granted or not?

6 A. Part of the problem that we had in terms of what
7 we were dealing with on that part of the investigation is
8 that it is an administrative investigation, so the ability
9 of the employer to access information has issues.

10 Q. Well, it's a criminal investigation, too, isn't
11 it?

12 MS. RUBENS: I will just ask you to allow her to
13 finish her answer.

14 MR. PROVENZALE: I thought she was done.

15 THE WITNESS: That part of the -- you got to
16 understand, an IAD investigation is bifurcated always.
17 There is two aspects to every IAD investigation,
18 particularly when a police officer is accused of a criminal
19 conduct. I've got administrative action responsibility and
20 I've got -- and so within this investigation, it was very
21 clear the distinction between the two. I had confidential
22 doing my criminal. I had OPS and IAD going forward with the
23 admin. So the issue of where Mr. Abbate was, really,
24 frankly, had two factors for me, that, one, when a police

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1 while they are at a medical or mental health treatment
2 facility? I am not just talking about police officers, but
3 any suspect.

4 A. I guess there is degrees of the authority of the
5 police department to identify and locate individuals within
6 hospitals, and so, clearly, when it's within the context of
7 a media investigation, the ability to interview suspects,
8 witnesses, victims, that's one aspect, when we are dealing
9 with mental health treatment facilities, that is.

10 Q. What about a substance abuse treatment facility?

11 A. I would lump that with mental health facility. So
12 the first issue is whether or not we would be given access,
13 and then the second issue is that if access is not allowed,
14 generally we are dealing with some sort of a warrant
15 procedure.

16 Q. So in this case you learn from Lieutenant Naleway
17 that Officer Abbate was in some facility somewhere, correct?

18 A. Yes.

19 Q. And you didn't get any information as to how it
20 was that he learned that he was in a facility or that he
21 knew where the facility was, correct?

22 A. I don't know that Dave knew where the facility
23 was, but I don't have any recollection of how he got that
24 information.

1 officer is not immediately found on a relief of powers, I
2 have a tendency to want to make sure that they are safe,
3 that they have not committed suicide, and the second thing
4 is to find out where they are. And in this matter, and as
5 in the past, sometimes it is relayed to the idea that this
6 person has checked themselves in for mental health treatment
7 or substance abuse treatment. But that information in the
8 past had always been treated by IAD as HIPAA information.

9 Q. Well, in connection with the circumstances
10 attended to this case, at some point while you were trying
11 to locate him, you learned that there was an allegation that
12 he had threatened to plant drugs on people or falsely arrest
13 them; is that correct?

14 A. There was an allegation being investigated by OPS.

15 Q. So there was concern that he was doing things that
16 would implicate his police powers unlawfully while his
17 whereabouts were not specifically accounted for, meaning no
18 one knew exactly where he was at or what he was doing; is
19 that correct?

20 MS. RUBENS: Objection to time frame, and
21 mischaracterizes her previous testimony as to time frame.

22 THE WITNESS: Again, the subsequent allegations
23 and whether or not those were occurring while he was
24 allegedly in a hospital for treatment, my understanding is

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1 that a lot of the initial actions on this case happened
2 immediately and his subsequent, for lack of a better term,
3 disappearance on whether or not those actions were ongoing
4 there, I can't answer, but it is always a concern, we are
5 looking to relieve of the powers.

6 BY MR. PROVENZALE:

7 Q. In terms of any aspect of the IAD investigation,
8 whether it was the admin end or the criminal end, did you
9 ever direct any investigation of these allegations of
10 Mr. Abbate's efforts to either intimidate witnesses or
11 threaten witnesses in connection with efforts to try to
12 obtain the videotape?

13 A. You have to understand that the administrative
14 investigation was being conducted by OPS, so I am not
15 certain if the threat and the allegation information was
16 being actively investigated by IAD at that time, because
17 that information was being developed as the ongoing progress
18 of the OPS investigation. It seemed somewhat convoluted to
19 outside people that, you know, I had three issues with. I
20 had an OPS administration investigation separate and
21 distinct from my authority and jurisdiction of IAD. We were
22 there to support that. I had the investigation going to
23 find Mr. Abbate to relieve him of powers, and then I had the
24 criminal investigation into the battery. Now, the fact that

1 Mr. Abbate where these threats of false arrests and planting
2 drugs were recorded on the audiotape. Do you ever remember
3 hearing that audiotape or listening to it at any time in
4 connection with this investigation?

5 A. You know, I don't know if I heard the entire
6 audiotape, but I did hear parts of it.

7 Q. Do you remember at what point in time you heard
8 it?

9 A. I really don't.

10 Q. Let's put it in the time frame of when Mr. Abbate
11 was arrested first on the misdemeanor, was it before then?

12 A. I don't know.

13 Q. Do you know whether any efforts were made to
14 contact any of Mr. Abbate's family members to determine the
15 location of whatever facility he had checked himself into?

16 A. For the facility? I'm not certain about that.

17 Q. Do you know whether or not any fellow officers
18 with whom he had worked were contacted to identify what
19 facility Mr. Abbate had allegedly checked himself into?

20 A. Like I said, both parties were checked to try to
21 identify the locations. Whether or not it was specific to a
22 facility, I don't know.

23 Q. I mean, other than officers going out to his house
24 and knocking on the door, are you aware of any other efforts

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1 there is some leakage over here on OPS into the battery, I'm
2 not sure when my people knew about it, and I'm not sure when
3 it leaked.

4 Q. So is the answer that you are not aware of any
5 investigation that IAD -- any of your people did in either
6 assisting OPS or on their own to investigate the allegation
7 of Mr. Abbate engaging in either witness intimidation or
8 threats in order to obtain the videotape?

9 MS. RUBENS: Objection; form and mischaracterizes
10 completely.

11 THE WITNESS: Yeah, and I am not sure when and how
12 those interviews were shared, so I can't answer specifically
13 at what level, but I do know that the IAD investigation was
14 focused specifically on the battery. The identification and
15 evolution of information on witness intimidation I believe
16 came out of the OPS investigation. When that fed back into
17 the subsequent final charging by the state, I am not sure if
18 that was fed through IAD or OPS.

19 BY MR. PROVENZALE:

20 Q. Well, I am going to ask you to assume within two
21 days after the incident happened, so in the time frame of
22 when IAD became involved in the investigation, OPS was given
23 an audiotape of a woman who had worked in the bar at some
24 point in time relating conversations that she had with

1 that were made, or going out to the 20th District to ask his
2 supervisor whether he showed up to work on a certain day,
3 are you aware of any other efforts that were made to
4 identify Abbate's location, and specifically what treatment
5 facility he had allegedly checked himself into?

6 MS. RUBENS: It calls for speculation.

7 You can answer.

8 THE WITNESS: It's my understanding, and, again, I
9 would have to look at the investigative file, but,
10 generally, when we are -- they don't just knock on his door.
11 We reach out to family, they run vehicles, they attempt to
12 identify and locate the vehicle. So there is a variety of
13 things that IAD does once an officer is not immediately
14 available.

15 BY MR. PROVENZALE:

16 Q. And this officer, two of his family members were
17 either current or former Chicago police officers, so I
18 assume it would be easy to obtain contact information for
19 either of those individuals to communicate with them and
20 find out if they had information as to his whereabouts?

21 A. It is not always easy to get information, but
22 clearly I would assume, and I don't know, I didn't see the
23 step by step of what general -- but generally they would
24 reach out to employees to see whether or not this officer is

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<p>1 around.</p> <p>2 Q. You would agree that it would be an appropriate</p> <p>3 investigative step to, through whatever source you do it, to</p> <p>4 at least -- and legal source, to at least identify or make</p> <p>5 attempts to identify the location of an officer who had</p> <p>6 checked himself into a treatment facility, if not for his</p> <p>7 own safety -- especially one whose police powers you were</p> <p>8 going to take away, if not for his own safety, the safety of</p> <p>9 others. Would you agree with that?</p> <p>10 MS. RUBENS: Objection. Compound and incomplete</p> <p>11 hypothetical.</p> <p>12 THE WITNESS: I would agree that it is appropriate</p> <p>13 to try to find an officer. If I am expecting a parent to</p> <p>14 tell me where a person has been checked into for mental</p> <p>15 health, I don't know that I can demand that of a parent, but</p> <p>16 clearly we would try to find that information out.</p> <p>17 BY MR. PROVENZALE:</p> <p>18 Q. Given the circumstances in this case where it was</p> <p>19 reported to you by Officer Naleway that Mr. Abbate couldn't</p> <p>20 be located and that he was at an unknown treatment facility,</p> <p>21 was there ever any discussion of getting a warrant?</p> <p>22 A. We briefly discussed it, but understand that at</p> <p>23 the time that we were discussing it, that we were looking</p> <p>24 for misdemeanor charges, so the idea of letting the</p>	<p>1 arrest or planting drugs, things like that?</p> <p>2 A. Again, I don't know if that was part of the</p> <p>3 knowledge at the time that we were trying to locate Abbate</p> <p>4 Q. That's the point I'm making. As you sit here</p> <p>5 today, you do not recall that that was something that was a</p> <p>6 consideration in your mind in making the determination of</p> <p>7 whether or not to get a warrant --</p> <p>8 A. Right.</p> <p>9 Q. -- for an officer whom you had no idea where he</p> <p>10 was, location wise?</p> <p>11 A. You are saying an arrest warrant?</p> <p>12 Q. Yes. An arrest warrant, correct.</p> <p>13 A. That's correct.</p> <p>14 Q. At some point in time were you ever involved in</p> <p>15 the initiation of a CR file regarding the four officers who</p> <p>16 had responded to the bar that evening?</p> <p>17 A. I don't know if I was involved in an initiation.</p> <p>18 I would have had knowledge of it.</p> <p>19 Q. Were you ever involved in the assignment of that</p> <p>20 investigation, or did OPS handle that, to your knowledge?</p> <p>21 A. That's a good question.</p> <p>22 Generally, that would have been assigned to the</p> <p>23 Internal Affairs Division. I don't know if OPS retained</p> <p>24 that investigation because they had the initial</p>
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<p>1 investigation and getting the investigation full scale</p> <p>2 versus trying to get a misdemeanor warrant for an unknown</p> <p>3 location at that point did not become, I guess, critical is</p> <p>4 the term that I would use.</p> <p>5 You know, we were still getting some of our ducks</p> <p>6 in a row, so to speak. So at that point we were his</p> <p>7 employer, we knew he would surface, it just becomes a</p> <p>8 question of whether or not we would have to go and, you</p> <p>9 know, pull him out of a treatment facility or not.</p> <p>10 Q. So it's your testimony as of the time -- as you</p> <p>11 sit here today, your only recollection is that, as of the</p> <p>12 time that you were having the discussion about whether to</p> <p>13 get a warrant, there was no concern in your mind as to any</p> <p>14 other criminal charges that were being investigated or</p> <p>15 pursued against Mr. Abbate other than the misdemeanor</p> <p>16 battery?</p> <p>17 A. At the time that I, you know, we believed him to</p> <p>18 be -- and I am not even sure that he was in a treatment</p> <p>19 facility today as I sit here. That we believed him to be in</p> <p>20 a treatment facility, we were, to my recollection, only</p> <p>21 looking at him under the misdemeanor battery.</p> <p>22 Q. And there was no suggestion of felony charges that</p> <p>23 could be pursued in connection with the allegation that he</p> <p>24 had through a third party communicated threats of false</p>	<p>1 investigation.</p> <p>2 MS. RUBENS: If you don't know, you don't know.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. PROVENZALE:</p> <p>5 Q. Were you ever involved in the initiation of a CR</p> <p>6 file in connection with three police officers who were</p> <p>7 apparently friends of Mr. Abbate's whom he had called either</p> <p>8 the night of the incident or very shortly in the following</p> <p>9 morning?</p> <p>10 A. Again, I have knowledge of the CR, but I don't</p> <p>11 know whether or not IAD or OPS investigated it.</p> <p>12 Q. My question is whether or not you had anything to</p> <p>13 do with the initiation of it?</p> <p>14 A. I don't believe I did.</p> <p>15 Q. Did you ever have anything to do with the</p> <p>16 assignment of that investigation of that CR?</p> <p>17 A. I don't recall.</p> <p>18 Q. Are you aware of what the findings were in</p> <p>19 connection with the CR related to the four officers that had</p> <p>20 responded to the bar that evening?</p> <p>21 A. No, I am not.</p> <p>22 Q. Were you part, to your recollection, of the</p> <p>23 command channel review process in connection with that CR?</p> <p>24 A. I don't recall.</p>

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1 Q. How many cases have you testified in as the ADS of
2 IAD?
3 MR. YAMIN: Deposition?
4 MR. PROVENZALE: No, trial.
5 THE WITNESS: Trial?
6 MR. PROVENZALE: Yes.
7 THE WITNESS: None.
8 MR. PROVENZALE: I think I'm done. I'm sure I
9 will have questions when you are done.
10 MR. YAMIN: Actually, I don't have too many. I
11 just want to take a brief break.
12 MR. PROVENZALE: Sure.
13 (WHEREUPON, a short recess was had.)
14 MR. YAMIN: Just a couple questions from me and
15 then Barrett has a couple of questions.
16 CROSS - EXAMINATION
17 By Mr. Yamin
18 Q. Ms. Kirby, you were head of IAD for how many
19 years?
20 A. About three and a half years.
21 Q. And as head of IAD and subsequently, have you been
22 and are you familiar with what guidelines or rules or
23 criteria sort of governed how investigations are conducted
24 by the Internal Affairs Division of the police department?

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1 MR. PROVENZALE: Just for the record, and just to
2 save everything, I am just going to make an objection and
3 have a standing objection for the line of questioning, to
4 the extent that you elicit any opinions from the witness on
5 foundation grounds. It calls for speculation and in
6 violation of 26(a)(2). Just a standing objection, so I
7 don't interrupt you.
8 MR. YAMIN: Do you need that repeated?
9 THE WITNESS: Yes, I am aware of them.
10 BY MR. YAMIN:
11 Q. Is there any general orders that apply to the
12 investigation of complaints of misconduct and subsequent
13 discipline of officers who are found to have violated the
14 rules and regulations of a police department?
15 A. You have General Order 93-3(a), which is the
16 complaint and disciplinary order. We have the SOP from IAD
17 which is not a general order, but stands as a directive, and
18 then we also have the collective bargaining agreements not
19 only for FOP, for PBA, and the various civilian unions that
20 we have within the Chicago Police Department.
21 Q. Let's back up to the first one. You said it was
22 General Order 93-3?
23 A. Correct.
24 Q. And that sets out guidelines for investigating

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1 complaints and disciplinary procedures for police officers?
2 A. Yes, it does.
3 Q. Is that correct? Okay.
4 And that governs investigations conducted both by
5 IAD and OPS and now IPRA; is that correct?
6 A. Correct.
7 Q. And you refer to an SOP. What are you referring
8 to there?
9 A. The Internal Affairs Division SOP.
10 Q. And, just generally, what kind of information, so
11 to speak, would be contained in the IAD SOP?
12 A. Just general operational matters specific to IAD
13 process, reference to where the general orders apply, but
14 various, day to day, I guess, operational issues within the
15 Internal Affairs Division are covered under the SOP.
16 Q. So the SOP has particular application to how
17 investigations are conducted by IAD; is that true?
18 A. Yes.
19 Q. General Order 93-3, I want to ask you about that.
20 If the SOP in large part is directed towards how
21 investigations are conducted, how would you compare that to
22 what 93-3 -- its impact on what IAD does?
23 MR. PROVENZALE: I am going to just object on
24 grounds of foundation. The general order speaks for itself,

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1 it calls for the witness to draw conclusions and make
2 interpretations that constitute conclusions of law. Or
3 opinions about conclusions of law.
4 MR. YAMIN: Do you need the question --
5 THE WITNESS: No. 93-3 is the, I guess, the
6 guiding directive. The IAD SOP extrapolates to the extent
7 that it deals with issues specifically faced by IAD. For
8 example, the general order calls for a closure of an
9 investigation within 30 days, but because of the complexity
10 of the investigations within IAD, those investigations
11 usually go beyond 30 days, and so the SOP deals with those
12 types of issues.
13 BY MR. YAMIN:
14 Q. And General Order 93-3 you said is more the --
15 what would you say, provides the overall framework for how
16 the department deems investigations are to be conducted and
17 disciplined to be dealt with?
18 A. That's correct. It also applies to the field
19 investigations not retained by IAD, so it is the -- it is
20 the framework under which all discipline investigations are
21 conducted.
22 Q. You also mentioned, Ms. Kirby, I don't know if you
23 used the phrase collective bargaining agreement or contract,
24 but that was yet a third document, I guess, that needs to be

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<p>1 taken into account when IAD conducts investigations; is that</p> <p>2 correct?</p> <p>3 A. That is correct.</p> <p>4 Q. What do you want to call it, contract?</p> <p>5 A. Frankly, we call it both. I think that within the</p> <p>6 legal arena it is called the collective bargaining</p> <p>7 agreement, within the IAD investigation mode it is called</p> <p>8 the contract.</p> <p>9 Q. Okay. Well, regardless of how we want to refer to</p> <p>10 it, contract or collective bargaining agreement, what role</p> <p>11 does it play in terms of how it has an impact on IAD</p> <p>12 investigations?</p> <p>13 MR. PROVENZALE: Same prior objection that I made</p> <p>14 regarding foundation. It calls for a conclusion.</p> <p>15 THE WITNESS: Well, the general order is 93-3,</p> <p>16 which means that it originated in 1993. We've had, I</p> <p>17 believe, three collective bargaining agreements signed since</p> <p>18 then, and so any modifications around administrative</p> <p>19 discipline that was negotiated for under the agreements</p> <p>20 would then supersede any existing provision within 93-3.</p> <p>21 An example used earlier in this deposition was the content</p> <p>22 of the affidavit. Affidavit was state law, and it was</p> <p>23 negotiated with the unions as to how it would be utilized</p> <p>24 within the City of Chicago, and so for that distinct</p>	<p>1 agreement, and they would supersede the general order within</p> <p>2 the context of those specific issues. But complimentary,</p> <p>3 they're not -- they don't stand alone in either matter, 93-3</p> <p>4 and collective bargaining agreement.</p> <p>5 MR. YAMIN: Thank you.</p> <p>6 BY MR. YAMIN:</p> <p>7 Q. Is there anything else, besides what you've just</p> <p>8 testified to, that has a bearing on IAD's investigative</p> <p>9 function?</p> <p>10 MR. PROVENZALE: Objection; lacks foundation,</p> <p>11 calls for a legal conclusion.</p> <p>12 THE WITNESS: In terms of the conduct of</p> <p>13 investigations or the implementation of discipline, it's a</p> <p>14 subset of the collective bargaining agreement, but any</p> <p>15 arbitration decisions relative to the interpretation of past</p> <p>16 disciplinary matters within the CPD, and clearly there is</p> <p>17 always state and constitutional law, but for the purposes of</p> <p>18 directives, we had to follow 93-3, the IAD-SOP collective</p> <p>19 bargaining agreement, and then any arbitration decisions</p> <p>20 that interpret the collective bargaining agreement.</p> <p>21 MR. YAMIN: No further questions from this half of</p> <p>22 the City.</p> <p>23</p> <p>24</p>
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<p>1 purpose, the contract has control over what the process is</p> <p>2 for affidavits.</p> <p>3</p> <p>4 BY MR. YAMIN:</p> <p>5 Q. Now, your last answer was focused on how</p> <p>6 provisions in the contract may have an effect on operative</p> <p>7 guidelines that are, for example, codified in general order.</p> <p>8 Generally, does the contract govern how IAD deals with</p> <p>9 investigations and discipline on all matters that it</p> <p>10 addresses? In other words, you know, the contract covers</p> <p>11 many issues, not all of which are -- not all of which have</p> <p>12 a, you know, a direct link to something that's in general</p> <p>13 order 93-3?</p> <p>14 MR. PROVENZALE: Same prior objection; foundation,</p> <p>15 calls for a legal conclusion.</p> <p>16 MR. YAMIN: Do you follow what I am --</p> <p>17 THE WITNESS: Right. The collective bargaining</p> <p>18 agreements cover a variety of issues. Where the collective</p> <p>19 bargaining agreement has, I guess, authority to those</p> <p>20 matters that relate to the conduct of discipline</p> <p>21 investigations, discipline is a mandatory subject of</p> <p>22 bargaining. And so, you know, for grievance process</p> <p>23 adjudication, conduct of the, in terms of interviews, those</p> <p>24 are all mandated through the collective bargaining</p>	<p>1 MS. RUBENS: I just have a couple.</p> <p>2 CROSS - EXAMINATION</p> <p>3 By Ms. Rubens:</p> <p>4 Q. Ms. Kirby, is there an investigative rationale</p> <p>5 behind having someone sign a misdemeanor complaint even if</p> <p>6 felony charges are being sought?</p> <p>7 MR. PROVENZALE: Objection; lacks relevance,</p> <p>8 incomplete hypothetical.</p> <p>9 MS. RUBENS: You can answer.</p> <p>10 THE WITNESS: Frankly, it's from the perspective</p> <p>11 of assisting, I guess, the victim. Some detectives follow</p> <p>12 that practice when they are going for felony charges in case</p> <p>13 felony charges are not approved, the victim doesn't need to</p> <p>14 be located again to sign the misdemeanor complaint. So it</p> <p>15 is not a mutually exclusive issue, it's just a question of</p> <p>16 making it easier on the victim.</p> <p>17 BY MS. RUBENS:</p> <p>18 Q. What would the misdemeanor complaint allow the</p> <p>19 officers to do?</p> <p>20 MR. PROVENZALE: Objection; lacks foundation,</p> <p>21 relevance, calls for speculation.</p> <p>22 THE WITNESS: A signed misdemeanor complaint in</p> <p>23 and of itself doesn't do anything, but allows the officer to</p> <p>24 enter misdemeanor charge upon the rejection of a felony</p>

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<p>1 charge.</p> <p>2 BY MS. RUBENS:</p> <p>3 Q. The signing of misdemeanor complaint precludes</p> <p>4 charging someone with a felony in any way?</p> <p>5 MR. PROVENZALE: Objection. It calls for a legal</p> <p>6 conclusion.</p> <p>7 THE WITNESS: Not in the practice of the Chicago</p> <p>8 Police Department, no.</p> <p>9 BY MS. RUBENS:</p> <p>10 Q. After your conversation with Scott Cassidy in</p> <p>11 which he informed you that they were going to approve felony</p> <p>12 charges, what, if any, action did IAD take?</p> <p>13 A. IAD made the arrest in the felony and put</p> <p>14 Mr. Abbate into custody.</p> <p>15 MS. RUBENS: That's all the questions I have.</p> <p>16 Thank you.</p> <p>17 MR. APICELLA: Ms. Kirby, I have just a couple</p> <p>18 follow-ups, and they deal with mainly the upgrade of the</p> <p>19 charge to a felony. Okay.</p> <p>20 CROSS - EXAMINATION</p> <p>21 By Mr. Apicella:</p> <p>22 Q. Earlier you testified that over the course of</p> <p>23 your career, other than this case, you had never seen this</p> <p>24 specific provision of a criminal code used to upgrade a</p>	<p>1 A. I couldn't, but in 22 years, I mean, the simple</p> <p>2 battery charge or even aggravated battery charge is a fairly</p> <p>3 common charge, and while the commander of the vice control</p> <p>4 section, we received all reports on batteries occurring on</p> <p>5 liquor premises, so I would say numerous.</p> <p>6 Q. And you've never seen this provision of the code</p> <p>7 used to charge anyone?</p> <p>8 A. In my experience, no.</p> <p>9 Q. Are you aware of any attempt by anyone outside the</p> <p>10 State's Attorney's Office to influence the decision to</p> <p>11 charge Mr. Abbate with a felony?</p> <p>12 A. Aside from the CPD?</p> <p>13 Q. Aside from the CPD.</p> <p>14 A. No, I am not.</p> <p>15 Q. Are you aware of Ms. Obrycka or anyone on her</p> <p>16 behalf making any attempt to influence the decision to</p> <p>17 upgrade the charge to a battery?</p> <p>18 MR. PROVENZALE: You mean aggravated battery?</p> <p>19 MR. APICELLA: Yes.</p> <p>20 THE WITNESS: I'm not aware of any conversations</p> <p>21 Ms. Obrycka had with the State's Attorney's Office.</p> <p>22 BY MR. APICELLA:</p> <p>23 Q. Are you aware of any conversations that any</p> <p>24 attorney -- any conversation that an attorney may have had</p>
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<p>1 simple battery up to a felony battery; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And the code provision, basically, just deals with</p> <p>4 the location of the battery, correct?</p> <p>5 A. As I recall, that's correct. I don't have it in</p> <p>6 front of me, but I will take your word at face value.</p> <p>7 Q. Is it your understanding that the code provision</p> <p>8 that was relied upon makes it a felony to commit a simple</p> <p>9 battery in a tavern?</p> <p>10 A. Correct.</p> <p>11 Q. Over the course of your career, how many batteries</p> <p>12 have you seen?</p> <p>13 MR. PROVENZALE: Seen or -- like in person?</p> <p>14 THE WITNESS: Seen enough of those.</p> <p>15 MR. YAMIN: Keep going.</p> <p>16 MR. APICELLA: I will withdraw the prior question.</p> <p>17 BY MR. APICELLA</p> <p>18 Q. Over the course of your career, how many incidents</p> <p>19 of battery have you been involved in as a police officer?</p> <p>20 A. I believe you have the same challenge on that one,</p> <p>21 but I've been -- I've investigated and I have recorded</p> <p>22 numerous battery reports in my career as a police officer.</p> <p>23 Q. Can you characterize as numerous; is it more than</p> <p>24 a thousand?</p>	<p>1 on Ms. Obrycka's behalf with the State's Attorney's Office</p> <p>2 to persuade them to upgrade the charge to a felony?</p> <p>3 A. No, I'm not.</p> <p>4 Q. Earlier you also talked about the normal procedure</p> <p>5 when a charge is upgraded to a felony, and I believe you</p> <p>6 said that the charge would be upgraded in court. Do you</p> <p>7 recall that?</p> <p>8 A. I didn't reference that as a normal, but I stated,</p> <p>9 I think, at some point that the charge could have been</p> <p>10 upgraded in court, correct.</p> <p>11 Q. Well, what is your understanding of what the norm</p> <p>12 is?</p> <p>13 A. In pursuing felony charges?</p> <p>14 MR. PROVENZALE: I am going to object. It lacks</p> <p>15 foundation.</p> <p>16 BY MR. APICELLA:</p> <p>17 Q. What is your understanding of -- let me back up.</p> <p>18 Over the course of your career, you have had cases</p> <p>19 that started as misdemeanors and ended up as felonies,</p> <p>20 correct?</p> <p>21 A. That they were arrested as a misdemeanor?</p> <p>22 Q. Yes.</p> <p>23 A. It has happened, but it's rare.</p> <p>24 Q. And when it does happen, is it your experience</p>

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1 that a separate arrest warrant is issued, or would the
 2 charges just be upgraded at court?
 3 A. I have, on the same issue, where there is already
 4 an arrest, I don't recall any separate arrest occurring.
 5 Q. Do you know what happened in this case?
 6 A. In regards to?
 7 Q. To Mr. Abbate.
 8 A. Referencing the arrest?
 9 Q. Yes.
 10 A. He was arrested twice.
 11 Q. Do you know why that was?
 12 A. Because the state's attorney decided that they
 13 would charge -- or they would approve the aggravated battery
 14 charge.
 15 Q. Did you have any input into a second arrest?
 16 MR. PROVENZALE: Objection; vague.
 17 BY MR. APICELLA:
 18 Q. Did you have any input into the decision to arrest
 19 Mr. Abbate the second time?
 20 A. Well, when it was decided that he would be
 21 arrested, I said the CPD would do the arrest, correct.
 22 Q. Who made the decision to arrest the second time?
 23 MR. PROVENZALE: Objection; lacks foundation.
 24 MS. RUBENS: And vague.

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1 THE WITNESS: Once it was established that there
 2 was probable cause, the arrest was completed by my sergeant
 3 but I had stated that CPD would support the arrest if there
 4 was probable cause.
 5
 6 BY MR. APICELLA:
 7 Q. Who made the determination of probable cause
 8 existed?
 9 A. Frankly, the state's attorney did when they
 10 approved the felony charges.
 11 Q. Did anyone at the State's Attorney's Office ask
 12 that Mr. Abbate be arrested again?
 13 A. I think -- you know, I don't recall if it was a
 14 specific question, but there was only one of two ways of
 15 having it done, it would either be a direct indictment or
 16 physical arrest. Whether or not they asked or we
 17 volunteered, I'm not sure, but there was a mutual agreement
 18 that he would be arrested for the battery.
 19 Q. Who agreed to that?
 20 A. It was in a conversation that I had with
 21 Mr. Cassidy.
 22 Q. Was that in person?
 23 A. No, it was on the phone.
 24 Q. Was anyone else present for that conversation?

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1 A. I don't recall anybody being present on my end.
 2 MR. APICELLA: That's all I have.
 3 MR. PROVENZALE: Just a few follow-up.
 4 REDIRECT EXAMINATION
 5 By Mr. Provenzale:
 6 Q. Are you aware that Mr. Abbate's CR file is closed
 7 with charges pending recommending termination?
 8 A. Yes, I am.
 9 Q. Do you know how the closure of his CR file was
 10 coded in terms of the identification of the primary or
 11 subcategories of misconduct?
 12 A. No, I do not.
 13 Q. Where does that show up, if anywhere, in the CR
 14 file?
 15 A. I'm not sure if it's on the face sheet. You got
 16 to understand, OPS, IPRA, has a different procedure than IAD
 17 does, and so I don't know if OPS information is sent to us
 18 through, like, what they call the half sheet that then
 19 allows for that data entry, or if they actually enter the
 20 correct information -- the final information, not the
 21 correct. The final information on the first page, what's
 22 known as the face sheet.
 23 Q. Does it all get routed through IAD for ultimate
 24 data entry?

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1 A. It used to, but now, as they are rolling out with
 2 the auto complaint system, some of it is done solely by
 3 IPRA, and so I am not sure at what juncture we are right now
 4 because I have not been at IAD for a year.
 5 Q. Let's assume that this was IPRA at the time that
 6 the investigation was closed and then the command channel
 7 review process was completed and then termination complain
 8 was presented to the police board, where would that final
 9 coding of the allegations of misconduct be found?
 10 A. In the file?
 11 Q. In the CR file. If it would be found in there.
 12 A. To my understanding, and, again, it's been a while
 13 since I looked at a face sheet, it would be on the face
 14 sheet of the investigation. You have to understand that now
 15 there is electronic format, although I believe this case was
 16 in before they were fully electronic, so some back data
 17 entry that's being done into another system. So, as far as
 18 coding, you know, I honestly don't know if the data entry
 19 people code it based on the rule violation and actually
 20 contained on the face sheet now.
 21 Q. If the data entry people code it based upon the
 22 rule violation, is there any way to back -- well, is there
 23 any way to figure out how they coded it that you are aware
 24 of?

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1 MS. RUBENS: Objection; foundation, calls for
2 speculation.

3 THE WITNESS: I'm not sure how it is done, but the
4 code itself, to my understanding, is on the face sheet.

5 BY MR. PROVENZALE:

6 Q. And if it's not on the face sheet, do you know
7 where it would be recorded elsewhere?

8 A. I don't know.

9 MS. RUBENS: Objection.

10 THE WITNESS: I would go to my sergeants for that.

11 BY MR. PROVENZALE:

12 Q. You mentioned that your office handled the arrest
13 of Mr. Abbate on the second arrest, the felony arrest,
14 correct?

15 A. That's correct.

16 Q. Was it Detective Boyd and Sergeant Stehlik who had
17 handled that, to your knowledge?

18 A. I don't believe it was. On the second arrest?

19 Q. On the felony.

20 A. I thought it was Sergeant Skala, but I would have
21 to look at the --

22 Q. Okay. Well, Sergeant Stehlik and Sergeant Skala?

23 A. I don't know who the partners were, but I do know
24 that Sergeant Skala was there, I do believe.

1 with the manner in which whatever IAD officers they were who
2 took Mr. Abbate into custody on the felony for the violation
3 of breach of any department general order, rule, or safety
4 precaution related to taking felony suspects into custody --

5 A. I don't recall that -- I don't recall if a CR was
6 initiated.

7 Q. And did you ever initiate one, to your
8 recollection?

9 A. I did not.

10 Q. A circumstance like that would be an IAD
11 investigation, correct? That would not be an OPS
12 investigation unless that was something that the
13 superintendent had told OPS to handle?

14 A. Correct.

15 Q. Categorically, that's otherwise an IAD
16 investigation?

17 A. Correct.

18 MR. PROVENZALE: That's all.

19 MR. YAMIN: Thank you.

20 MS. RUBENS: Do you want to reserve?

21 MR. YAMIN: We reserve.

22 MR. PROVENZALE: Okay.

23 AND FURTHER DEPONENT SAITH NOT ...

24

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1 Q. Let me just -- whoever it was, do you remember
2 seeing anything on TV where media had recorded the
3 circumstances under which they took Mr. Abbate into custody
4 on that felony?

5 A. Yes, I do.

6 Q. Do you remember seeing circumstances essentially
7 to the effect that he was not handcuffed or padded down and
8 searched prior to the time he was placed into the squad car?

9 MS. RUBENS: Objection to relevance.

10 THE WITNESS: I saw him being placed into the
11 squad car, I don't know what happened prior.

12 BY MR. PROVENZALE:

13 Q. You never saw any footage showing him being led
14 out of his alley, across the apron of a short driveway, into
15 an alley garage, and then being placed into the squad car
16 without handcuffs or without being padded down?

17 MS. RUBENS: Object to form, compound.

18 THE WITNESS: I didn't see that. Like I said, I
19 saw him being put into the squad car.

20 BY MR. PROVENZALE:

21 Q. And what you saw, do you remember whether he was
22 handcuffed?

23 A. As I recall, he was not.

24 Q. Was there ever any CR file initiated in connection

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 KAROLINA OBRYCKA, MARTIN)
5 KOLODZIEJ, and EVA CEPIASZUK,)

6 Plaintiffs,)

7) No. 07 C 2372

8 -vs-) Judge

9) Amy J. St. Eve

10 CITY OF CHICAGO, a Municipal) Magistrate Judge
11 Corporation, et al.,) Nan R. Nolan

12 Defendants.)

13 I, DEBRA KIRBY, being first duly sworn, on oath,
14 say that I am the deponent in the aforesaid deposition,
15 taken on March 12, 2009, that I have read the foregoing
16 transcript of my deposition, consisting of Pages 1 through
17 140, inclusive, taken at the aforesaid time and place, and
18 that the foregoing is a true and correct transcript of my
19 testimony so given.

20 DEBRA KIRBY, Deponent
21 SUBSCRIBED AND SWORN TO
22 before me this day
23 of , A.D. 2009.

24 Notary Public

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UNITED STATES OF AMERICA)
NORTHERN DISTRICT OF ILLINOIS) SS:
EASTERN DIVISION)
STATE OF ILLINOIS)
COUNTY OF DU PAGE)

I, MARIE WALSH FITZGERALD, a Notary Public within
and for the County of DuPage, State of Illinois, and a
Certified Shorthand Reporter of said state, do hereby
certify:

That previous to the commencement of the
examination of the witness, the witness was duly sworn to
testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was
reported stenographically by me, was thereafter reduced to
typewriting under my personal direction and constitutes a
true record of the testimony given and the proceedings had;

That the said deposition was taken before me at
the time and place specified;

That the reading and signing by the witness of the
deposition was agreed upon as stated herein;

That I am not a relative or employee or attorney
or counsel, nor a relative or employee of such attorney or
counsel for any of the parties hereto, nor interested

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directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand and
affix my seal of office at DuPage County, Illinois, this
28th day of April, 2009.

Notary Public, DuPage County, Illinois
C.S.R. Certificate Number 084-002307